

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1336

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**United States Court of Appeals**

FOR THE SECOND CIRCUIT

Nos. 74-1336 and 74-1495

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LORENZ SCHNEIDER CO., INC.,

*Petitioner,*

—against—

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

ON PETITION FOR REVIEW AND TO SET ASIDE AND CROSS  
APPLICATION FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD

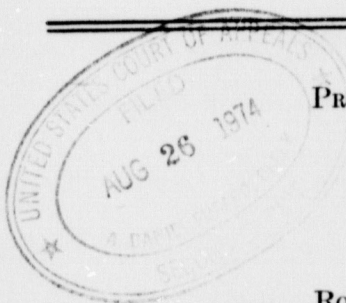
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**JOINT APPENDIX**

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PROSKAUER ROSE GOETZ & MENDELSON  
*Attorneys for*  
*Lorenz Schneider Co., Inc.*  
300 Park Avenue  
New York, N. Y. 10022  
593-9000

ROBERT SEWELL  
PETER CARRE  
*Attorneys*  
National Labor Relations Board  
Washington, D. C. 20570

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## JOINT APPENDIX

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**Chronological List of Relevant Docket Entries**

In the Matter of: Lorenz Schneider Co., Inc.

Case No.: 29-CA-3459

- 4.26.72 Petition filed in 29-RC-1980
- 5.8.72 Notice of Representation Hearing, dated
- 10.3.72 Decision and Direction of Election, issued
- 10.20.72 Lorenz' Request for Review, dated
- 11.3.72 Board's teletype postponing Election, dated
- 1.23.73 Board's telegraphic order granting in part and denying in part Lorenz' Request for Review and postponing election, received
- 1.29.73 Independent Routemen's teletype requesting an extension of time to file brief and also requesting oral argument, dated
- 1.31.73 Lorenz' teletype opposing Independent's extension, dated
- 2.1.73 Board's teletype granting Independent's request for an extension, dated
- 4.25.73 Board's Decision on Review, dated
- 5.7.73 Stipulation signed by Independent Routemen's Assoc., dated
- 5.14.73 Stipulation signed by Lorenz, dated
- 5.14.73 Regional Director's Order Amending Decision and Direction of Election, dated
- 5.18.73 Tally of Ballots, issued

*Chronological List of Relevant Docket Entries*

- 5.29.73 Certification of Representative, dated
- 6.28.73 Charge filed in 29-CA-3459
- 7.10.73 Lorenz' letter setting forth its statement of position, dated
- 7.12.73 Complaint and Notice of Hearing, dated
- 7.26.73 Lorenz' Answer, received
- 8.2.73 General Counsel's Motion for Summary Judgment, dated
- 8.6.73 Board's Order Postponing Hearing Indefinitely, dated
- 8.14.73 Order Transferring Proceeding to the Board and Notice to Show Cause, dated
- 8.30.73 Lorenz' Statement in Opposition to Motion of General Counsel for Summary Judgment and Cross-Motion for Summary Judgment, dated
- 12.10.73 Lorenz' letter requesting that the proceedings be reopened, received
- 2.22.74 Board's Decision and Order, issued
- 2.27.74 Board's Order Amending Decision and Order, dated



# PETITION

INSTRUCTIONS: Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.  
If more space is required for any one item, attach additional sheets, numbering them accordingly.

FILE NO. 44-16-72  
DATE FILED 4-16-72

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act:

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer, check herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

- ☐ **RC-CERTIFICATION OF REPRESENTATIVE**—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ **RE-REPRESENTATION (EMPLOYER PETITION)**—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ **RD-DECERTIFICATION**—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ **RD-WITHDRAWAL OF UNION SHOP AUTHORITY**—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ **UC-UNIT CLARIFICATION**—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. \_\_\_\_\_
- ☐ **AC-AMENDMENT OF CERTIFICATION**—Petitioner seeks amendment of certification issued in Case No. \_\_\_\_\_

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER LORENZ SCHNEIDER CO., INC. EMPLOYER'S REPRESENTATIVE TO CONTACT MILTON V. BROWN PHONE NO. 516-323-1400

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code)  
2000 Plaza Avenue, New Hyde Park, New York 11040

4a. TYPE OF ESTABLISHMENT (Factory, mine, warehouse, etc.) Warehouse—Potato Chips and Food Supplies 4b. INDUSTRY, PRINCIPAL PRODUCT OR SERVICE Potato Chips

5. Unit Involved (In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)

Included

All driver-salesmen working out of 2000 Plaza Avenue, New Hyde Park, New York, and at Riverhead, New York

6a. NUMBER OF EMPLOYEES IN UNIT  
PRESENT 55  
PROPOSED (BY UC/AC) \_\_\_\_\_

Excluded

Supervisors, Guards, Office employees and warehouse employees

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?  
☒ YES ☐ NO

\*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check one, complete EITHER item "a" or "b," whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on March 27, 1972 and Employer declined recognition on or about No direct response (If no reply received, so state) (Month, day, year)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act

8. Acknowledged or Certified Bargaining Agent (If there is none, so state)

NAME None AFFILIATION \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF RECOGNITION OR CERTIFICATION \_\_\_\_\_

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year) \_\_\_\_\_ 10. IF YOU HAVE CHECKED BOX 10 IN 1 ABOVE, SHOW HERE THE DATE OF EXPIRATION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year) \_\_\_\_\_

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT INVOLVED? YES \_\_\_\_\_ NO X 11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING? \_\_\_\_\_

11c. THE EMPLOYEE HAS BEEN PICKETED BY OR ON BEHALF OF \_\_\_\_\_ (Insert name) A LABOR ORGANIZATION, OR \_\_\_\_\_ (Insert address) SINCE \_\_\_\_\_ (Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE (IF NONE, SO STATE)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
<u>None</u>			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

INDEPENDENT ROUTEMEN'S ASSOCIATION Independent  
(Petitioner and affiliation, if any)

Joseph P. Minich President  
(Signature of representative or authorized filing agent) (Title, if any)

110 Old Country Road, Great Neck, New York 11040 516-243-1200  
(Address and telephone number) (Telephone number)

PRINTED AT THE PETITION OFFICE, NATIONAL LABOR RELATIONS BOARD, 1115 K STREET, N.W., WASHINGTON, D.C. 20540

Representation Petition 3a






3a

**Representation Petition**

4a

**Stenographic Transcript**

(See Opposite) 

**Excerpts From the Stenographic Transcript  
of Testimony**

[36] (Discussion off the record.)

Hearing Officer: Back on the record.

Mr. Dicker—

Mr. Dicker: Mr. Kendellen, at the last initial hearing in this matter you asked the Employer to state a position with regard to the petition as remains the two issues, through oversight on my part, I neglected to raise an issue concerning, based on Section 9-C3 of the Act.

On December 16, 1971 petition was filed for the route salesmen of the Employer herein in Region 29-RC-1881.

The petition is dated as of December 16, 1971 and pursuant to a stipulation for certification an election was held on January 20th, 1972 for the route salesmen of Lorenz Schneider Company, Inc.

This petition covered all of our employees who drive routes.

If the individuals here were employees they were entitled to vote in our election.

If the individuals here were not employees then they were not entitled to vote for an election regardless of what—that issue was not raised, I admit, but we did have an election covering our route salesmen on January 20, 1972.

There was no—no participation as far as I know, although I think one independent contractor did attempt [37] to vote subject to challenge.



*Colloquy*

We take the position that this petition is barred on the basis of that. I have copies of it.

Hearing Officer: You mean that the election is a bar?

Mr. Dicker: That the election is a bar, I'm sorry.

I have copies of the petition and of the stipulation for the certification which I think the Board can take judicial notice, which I think perhaps in an effort to make it easier to have everything in one place I would like to offer them.

Hearing Officer: Mr. Dicker, the bargaining unit again in the stipulation entered into for an election in that case was what?

Mr. Dicker: Is the bargaining unit in the stipulation for certification which was entered into included all sales promotional employees, helpers and assistant distributors' representatives.

Excluded all other employees, guards, supervisors as defined in the Act.

The term sales promotional employees is clarified by the petition which indicates that what the Petitioner meant or the parties meant were route salesmen.

The petition says all sales promotional men (route salesmen).

Mr. Rosenberg: I don't believe that the—

[38] Hearing Officer: Just a moment.

Are you alleging, Mr. Dicker, that any of the individuals in that bargaining unit are the same make-up—excuse me—are you alleging that any of the individuals covered by that bargaining unit are the

*Colloquy*

same individuals whose status is in question in this hearing?

Mr. Rosenberg: Very well put.

Hearing Officer: Just a moment.

Mr. Rosenberg: I'm agreeing with you. I like the way you put it.

Hearing Officer: Okay.

Mr. Dicker: Our position is very simply that the election that was held on January 20th, 1972 covered or had eligible to vote in it all employees who drove on routes for Lorenz Schneider, all employees as that term is defined in the Act.

I'm not clear what this petition is for here, but if it is for alleged employees who drive routes for Lorenz Schneider then I say that this petition back—the petition election back in January of 1972 covered everybody who was an employee who drove outside routes for Lorenz Schneider.

Mr. Rosenberg: Can I get a word in on this one?

In the first place, the stipulation did not explicitly did not cover these members of this organization who were challenged even when they attempted to vote on the ground [39] that they were not employees but independent contractors as alleged by the Company.

Secondly, even if it was the intention of the Company in a little arrangement with Cohen, Weiss & Simon to work out a stipulation whereby they attempted to cover the employees, I only call your attention to the decision of this Board in the case of—involving the employees over in Staten Island of the proprietary homes.

*Colloquy*

I don't remember the case offhand because I didn't know this issue was going to be raised—

Hearing Officer: Silver Lake.

Mr. Rosenberg: Right. Silver Lake case.

Because I say it in that case again and again where even assuming arguendo there was a contract which was entered into which would have covered these employees, the contract that was entered into which is claim for a bar here did not apply to these employees

They were not given the benefits of nor covered by that contract and therefore not be bound by it and be excluded.

Hearing Officer: Before we go any further on the record on this matter, Mr. Dicker is referring to an election, not a contract.

Mr. Rosenberg: I presume it was followed by a contract.

[40] If I know anything about Cohen, Weiss & Simon—

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: Back on the record.

Mr. Rosenberg, before you go on about a contract what Mr. Dicker is raising a point is that it is affected by an election, not by a contract.

At this point, Mr. Rosenberg, do you have any objection for the consideration of the Board, the—

Mr. Dicker: Are we off the record?

*Colloquy*

Hearing Officer: No, we are on.

Mr. Dicker offered as the stipulation—

Mr. Rosenberg: I do on two grounds.

Number one, in an off the record discussion it became clear to me that apparently whatever stipulation was entered into between the Employer and the Union agreed to an election.

An election did result, and no certification was made, and therefore, would not be binding on these people.

It's not the same labor organization.

Hearing Officer: I didn't say that certification was made. I said something else, certification did issue on this case—

Mr. Rosenberg: Right. But the election resulted in no vote—

[41] Hearing Officer: (Continuing) —certification issued in the case. Certification is binding for one year.

In this case it will be binding one year from the date of the election. That's neither here nor there.

Mr. Rosenberg: That's right, but I claim it would not be binding on us in any event.

We were not parties to that for one.

Secondly, we're not—

Hearing Officer: Go ahead.

Mr. Rosenberg: (Continuing) —and there was specifically excluded from what I heard—statement by Counsel—I want you to know I know very little about this alleged event of January of 1972 other than what I hear here now—



*Colloquy*

Hearing Officer: Any exclusions in that, Mr. Dicker?

Mr. Dicker: Well—

Mr. Rosenberg: Read the stipulation itself, not his explanation as what it intends.

Mr. Dicker: I will read the petition and then I'll read the stipulation.

Mr. Rosenberg: No, sir, I ask that he reads the stipulation—

Hearing Officer: Mr. Rosenberg, I will ask him what he is to read.

Mr. Rosenberg: Please ask him to read the stipulation—

[42] Hearing Officer: Please read the exclusion and the stipulation.

Mr. Dicker: Just the exclusion and stipulation?

Hearing Officer: Yes.

Mr. Dicker: All other employees, guards and supervisors as defined in the Act.

Hearing Officer: You object to this being offered as an exhibit, Mr. Rosenberg?

Mr. Rosenberg: Yes, I do.

Mr. Dicker: I offer both the petition and stipulation. This is official—I believe these are Board records.

I think the Board can take judicial notice of it. I think there's only a question of whether or not you have to run to—you have to run to the records to get it.

Just let me respond to two things Mr. Rosenberg said, if I might, Mr. Kendellen.

*Colloquy*

First, I don't know what Mr. Rosenberg means by an arrangement between Cohen, Weiss & Simon—

Hearing Officer: There's no need to—

Mr. Dicker: All right.

Hearing Officer: (Continuing) —respond or—

Mr. Dicker: Okay.

The second thing I'd like to point out is that Section 9-C3 does not refer to individuals.

Section 9-C3 refers to bargaining units and the [43] determination is not whether or not a particular individual did or did not vote.

The question is whether or not a particular bargaining unit—

Hearing Officer: Cover—

Mr. Dicker: (Continuing) —cover, right.

Now, as Mr. Rosenberg himself said, there probably were one or two of the independent contractors who did attempt to vote, and they were challenged.

That doesn't mean that the charges were proper or improper.

Mr. Rosenberg: How about the stipulation itself?

The Employer enters into a stipulation with that Union, recognizing them as the collective agent, I'm assuming that to be so.

Hearing Officer: In what case?

Mr. Rosenberg: In any case. I'm just taking the theoretical discussion.

An employer and union enter into a stipulation with regard to a collective bargaining stipulation of a particular unit or units over the head of the employees without them having an opportunity to be held, without a vote being—

*Colloquy*

Hearing Officer: That is not the case here so please restrict yourself to what happened.

Mr. Rosenberg: I don't know what happened.

[44] I have no way of knowing. First I hear about this so-called stipulation and the—

Hearing Officer: The stipulation is not to enter into a collective bargaining agreement or agreement.

The stipulation is to enter into an agreement for an election to be held by the Board.

Please restrict yourself to the facts of this case.

Mr. Rosenberg: Now, the fact that they agreed that an election should be held and the election resulted in no certification, which I presume to be the fact—I don't know this because I have no personal knowledge of the status of that proceeding—but I'm trying to pick it up from the conversation between Counsel and you.

It would not be binding on us in any event. The result would not be binding on us in any event.

Hearing Officer: If the election was held in a bargaining unit—

Mr. Rosenberg: (Continuing) —by stipulation entered into over the heads of the employees.

Hearing Officer: If an election was held in a bargaining unit and a petition is filed for that same bargaining unit the petition would be dismissed up to one year from the date of the election.

Mr. Rosenberg: Even though it was entered into over the heads of the employees?

[45] Hearing Officer: That's true.

*Colloquy*

Mr. Rosenberg: You're wrong. If you don't like me saying so, I will say it on the record, you are 100 per cent wrong.

This Board cannot—we will presume for the purposes of this discussion a sweetheart arrangement between a friendly union and an employer—to prevent an unfriendly union from organizing and representing—

Hearing Officer: None of this is relevant to the case at hand, Mr. Rosenberg.

Mr. Dicker: If Mr. Rosenberg's remark is on the record, Mr. Kendellen, I just must not let it stand there.

Hearing Officer: Mr. Rosenberg, you were speaking *arguendo*, you weren't referring to the facts?

Mr. Rosenberg: Of course. As I stated before I know nothing at all about this record.

Mr. Dicker: I'd like the record to reflect there is no sweetheart arrangement between Cohen, Weiss & Simon and Local 802.

Hearing Officer: I would like the record to reflect that such matters are irrelevant to this hearing, and are not appropriate for discussion on this record, so I think that'll clarify things sufficiently.

You are offering that as an exhibit?

Mr. Dicker: Yes.

[46] Mr. Kendellen, I unfortunately do not have the certification or results of the election which I thought I brought with me, which I didn't.

I do have the petition filed with the Board, a copy of which was served upon my client, and I do have



*Colloquy*

a letter from the National Labor Relations Board enclosing a conform copy of the stipulation for certification.

I will supply before the hearing is over the actual certification of results so we can have it all in one place.

I would like to note that there is some handwriting on the letter from the Board, two names written on there, that's my handwriting and it did not appear on it when I initially received it from the Board.

I also have copies of the documents for Counsel for the Association.

(Mr. Dicker handing documents to Mr. Rosenberg.)

Mr. Rosenberg: Well, unfortunately not having received this before today or heard about it until today we are in no position other than to object to its introduction at this time to do more than to object to it.

Secondly, from what I've just been told a moment ago by one of my clients that this was an election among these drivers working for the company, the so-called sales promotional men who go out on the routes of these men that are represented by this organization and who are paid on a salary [47] basis by the Company, and we're prepared to prove that from what the information I have here.

We will subpoena the records of the Company to show that those were covered and did vote with

*Colloquy*

those who are salaried employees receiving a weekly stipend from this Company for going around to promote the Company's business; not these route salesmen who the Company alleges are independent contractors and not even covered by the—obviously they're excluded from this stipulation.

Hearing Officer: Mr. Dicker, because of the form that the copies that you've submitted, because of the form that they are in, I would prefer to take judicial notice of the Board case that contains the original documents in this matter.

Mr. Dicker: Well, could the original documents be secured, copied and made a part of this record?

It's not that old a matter. It was concluded, in fact, just recently.

Mr. Rosenberg: You will notice—

Hearing Officer: For the moment I'm going to reserve decision on the receiving these, this as an Employer's exhibit.

The issue, however, has been introduced into the record and I assume will be litigated, something that you've entered as a unit—as consideration in determination of [48] the unit.

Mr. Rosenberg: I'd like you to notice on Paragraph 12 of this paper that was handed to me the stipulation, which says included all sales promotional employees, helpers and assistant distributor representatives, and not the distribution salesmen covered by us.

Hearing Officer: Okay.

Mr. Rosenberg: They are not even covered—I know they're not because there was a case in which

*Colloquy*

one of them tried to vote, they were excluded as not being within the unit.

Hearing Officer: Well—

Mr. Dicker: May I have those documents back? They haven't been offered, haven't been accepted?

Mr. Rosenberg: Sure.

(Mr. Rosenberg handing documents to Mr. Dicker.)

Hearing Officer: The matter will be—will have to be litigated in a hearing, of course, so we will at this point note Mr. Dicker's statement of position on the matter and at this point I will ask are parties prepared to go forward on the substantive issue of this hearing?

Off the record.

(Discussion off the record.)

Hearing Officer: Back on the record.

Mr. Dicker, your request?

Mr. Dicker: Yes. Mr. Hearing Officer, I would [49] request that the Board produce at this hearing, 29th Region specifically, and have marked into evidence the original of the petition filed by Local 802 in 29-RC-1881, the stipulation for certification executed by the parties and Mr. Samuel M. Kaynard as Regional Director of the Board, and the certification results of the election in that matter which I believe was executed by a representative of the National Labor Relations Board.

*George Murphy—for Petitioner—Direct*

Mr. Rosenberg: Not only don't I object to it, but I'd like to add one more thing, do you have a list of eligible employees permitted to vote, and that's going to tell you the whole story.

I withdraw all objection to it. I want to see that original list that you submitted, the Employer submitted of the eligibles to vote, and I lay dollars to doughnuts that their names don't appear on it.

Hearing Officer: I will reserve decision, and will make a response as soon as appropriate.

Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Rosenberg: I'd like to state for the record that it is the position of this Association that not only is it a labor organization within the meaning of the Labor Management Relations Act, but the persons we seek to represent and [50] to have certified as collective bargaining agent of—are employees within the meaning of the Act.

\* \* \* \* \*

[53]

GEORGE MURPHY—Direct

Q. (By Mr. Rosenberg) Did you and others while connected with the Company form an organization? A. Yes.

Q. Did you adopt bylaws and a constitution? A. Yes, we did.

Q. Was that done at a regular meeting of all of the members? A. Yes, it was.



*George Murphy—for Petitioner—Direct*

Q. Was it adopted by what kind of a vote? A. It was a majority vote on the constitution.

[54] Q. Was it unanimous vote? A. Yes.

Q. Unanimous or majority, what was it? A. I think it was majority, because not all were a 100 per cent, were present.

Q. Of those present? A. Right. It was unanimous.

Q. Unanimous of those present? A. Right.

Q. I see.

Now, sir, when was this adopted? A. When?

Q. When? A. The exact date?

Q. Yes. Do you recall—I'll withdraw that. Let me get back to you.

I show you this— A. I would—

Q. Hold it one second.

Was such a meeting held on—was such a meeting held? Was such a meeting held for the purpose of adopting the bylaws and constitution? A. Yes.

Q. I show you this paper and ask you whether you can identify it?

[55] (Handing document to the witness.)

A. Yes. This was the constitution and bylaws adopted by our Association.

\* \* \* \* \*

[60] Q. (By Mr. Rosenberg) I call your attention since we're back on the record to Petitioner's Exhibit 1 in evidence, Article 2, Page 1, object and purposes of the organization.

*George Murphy—for Petitioner—Direct*

I specifically call your attention to Article 2, first page. The rest of the provision you're, of course, at liberty to read, but I don't think they're as pertinent to our issue as this.

(Mr. Rosenberg handing document to the Hearing Officer.)

Now, prior to the adoption of this constitution and by-laws—

Hearing Officer: Have you seen it?

Mr. Rosenberg: He's seen it.

Mr. Dicker: I would like to be able to read it and study it between now and the examination.

Q. Prior to the adoption of this constitution this organization was formed, is that correct? A. That is correct.

Q. Did you have meetings? A. Yes, we did.

[61] Q. And were the meetings addressed to negotiations with Lorenz Schneider Co., Inc. in regard to working conditions, earnings, et cetera?

Mr. Dicker: Objection. I think that certainly is leading in a particularly sensitive area.

I think the witness ought to be asked what happened at the meetings and when they were and who were there rather than have Counsel put words in the mouth—

Mr. Rosenberg: I wrote letters to your client which I will offer in evidence. It's just preliminary to that.

*George Murphy—for Petitioner—Direct*

Hearing Officer: But if Mr. Dicker objects to what were, of course, leading questions, phrase your question so that the witness states the facts.

Mr. Rosenberg: Those are facts. I don't understand that.

Hearing Officer: Would you withdraw your question and ask the witness to describe whatever meetings took place instead, if you don't mind?

Mr. Rosenberg: Sure.

Q. (By Mr. Rosenberg) When did your meetings take place? Start at the earliest meeting. A. December-January. December-January approximately, around that area. I can't be exact to the day.

Q. And what was discussed at those meetings with regard to Lorenz Schneider? [62] A. Discussion of percentages, rebates, price of our merchandise, paying for the shelving that we didn't particularly care for, the pads that we had to pay for—

Q. The what? A. Pads.

Q. What do you mean by pads? A. The seat box—

Q. Pads, p-a-d-s, is that right? A. Yes.

Q. I thought he said P-a-i-r, Pair. Go ahead. A. The discounting of merchandise in where we lost 10 cents on certain sales that were produced by the Company, promotional items, spoils and damages to it.

Q. Now, did the organization retain Counsel for the purposes of such negotiations with the Company? A. Yes, we did.

Q. Whom did you retain? A. We hired Rosenberg, Rosenberg & Rockman to represent us.

*George Murphy—for Petitioner—cross*

Q. And when were these discussions instituted to retain such Counsel? A. Around February, I believe.

Q. Now, did you request Counsel after obtaining same to write to the Company? A. Yes, we did.

\* \* \* \* \*

[98]

*Cross Examination:*

Q. (By Mr. Dicker) When were you elected president of the Independent Routemens' Association? A. Around February. I cannot give you the exact date.

Q. Now, you said, earlier, that you—the Association was formed sometime in December of '71 or January of '72. A. Somewhere around there, right.

\* \* \* \* \*

[102] Mr. Dicker: No, no.

Q. (By Mr. Dicker) What I am really asking you, Mr. Murphy, is to tell us how it came to pass that a group of individuals decided to form the group which is now called the Independent Routemens' Association? A. I was approached by several of the men who felt that if this business was their own, that they should be able to conduct it as their own, the same way I was.

But, we were in several instances, told what to do, what shelving to put in stores, and that if we didn't like it, they would take away our stops.

Several of the men, there were many other independents that come up, that they didn't like.

Q. You said they wanted to conduct the business as if it



*George Murphy—for Petitioner—cross*

were their own, the same way you were? A. When I was a distributor.

Q. When you were a distributor, you conducted the business as your own? A. As if it were my own.

Q. As if it were your own? A. Right.

Q. You were distributor until when? A. Around March. The exact date, I would have to check my contracts with the other individual.

Q. Now, these men approached you before or after you [103] left the position of distributor? A. Before.

Q. Before, so they were saying to you that they wanted to conduct their routes in the manner similar to the way you were conducting your routes? A. No, sir. I would like to clarify, as far as you are saying conducting the routes, or as my route. I never did feel that I was an independent routeman or that my distributorship was my own. I was completely and felt directly led by the company in every instance of my own business.

Supposedly, my own business.

Q. All right.

So, these men approached you, you say, in either December or January, December of '71 and January of '72? A. That's correct.

Q. And they had particular problems, and what was the purpose of approaching you? They wanted to do something about those problems? A. The group that—the group of guys that were talking were just generally talking and felt that we would like to do something, as a group, in regard to this fact, that we did not have any say or control over our own businesses, as it is so-called.

*George Murphy—for Petitioner—cross*

Q. So, what happened, next? [104] A. The Association was formed.

Q. You had a formal meeting to form the Association?  
A. That's right.

Q. When was that meeting? A. I can't give you the exact date, counselor. I don't have them in front of me.

Q. Approximately? A. In February, sometime.

Q. Did you keep minutes of that meeting? A. There were minutes kept, yes.

Q. Do you have copies of them? A. I don't have copies, no.

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[117]

But, I call your attention to the fact that, for his perusal and even enlightenment, I'm referring to counsel here, a letter, my letter of March 27, 1972, which predates the petition here for certification.

And that letter reads, and I'm reading only the second paragraph, it's only two paragraphs. I will read it.

It's addressed to Lorenz Schneider Company, Inc.

It says, "Gentlemen: Your letter of March 15—your letters of March 15 and 17 of 1972 has been received by your distributors and turned over to us. The attorneys for the Independent Routemens' Association, and which [118] Association the overwhelming majority of your distributor salesmen are members. The undersigned and the committee of the Independent Distributor's Association, representing the overwhelming majority of your distributor sales members welcome the opportunity to sit down with

*Kenneth Price—for Employer—Direct*

you to discuss grievances, working conditions, earnings and other problems concerning the distributor salesman, their routes and your company. Will you please contact the undersigned to arrange a mutually agreeable time and place for such discussion."

I bring that to your attention to show you that the foundation and in fact, the proof has been offered.

\* \* \* \* \*

[123]

Q. (By Mr. Dicker) All right, Mr. Murphy, the February 14th, 1972 meeting, which is in evidence as Employer's Exhibit 1, that was the first meeting you had of the Association and the meeting which you adopted your [124] name; is that right? A. Adopted the name of the Association?

Q. Yes. A. Yes.

\* \* \* \* \*

[161]

## KENNETH PRICE—Direct

Q. (By Mr. Dicker) Mr. Price, you said you are vice president and general manager of Lorenz Schneider? A. That's right.

Q. How long have you been employed by Lorenz Schneider? A. Twenty-two years.

Q. What business is Lorenz Schneider in? A. In the snack food business.

Q. Is it a manufacturer or what? A. No, we are not manufacturers. We are dealers for manufacturers.

Q. I am sorry. A. We are a key dealer for manufacturers.

Q. What does that mean? A. It means that we bring merchandise into our warehouse from various manufac-

*Kenneth Price—for Employer—Direct*

turers, and we sell this merchandise to distributors who are franchised men.

\* \* \* \* \*

[167] A. To him. That's right.

Q. Anything else? A. I think in general, that's it.

Q. All right.

Now, there are also distributor representatives? A. Excuse me, let me go back on that. They also make chain store calls, chain store buyers.

Q. You mean food chain stores? A. That's right.

Q. What kind of calls do they make on these chain store buyers? A. Well, they go out and see the buyers, offering new merchandise or trying to get items into the stores, and get them authorized.

Q. They don't go to the chain store managers, do they, the manager of the individual store? A. No, they go out into the office, into the buying office.

Q. What about the other group of employees you mentioned called distributor representatives, what do they do?

First of all, how many are there?

Mr. Rosenberg: Which are you talking about now?

Mr. Dicker: Distributor representatives.

Mr. Rosenberg: Dr's?

Mr. Dicker: Dr's. Five or six.

[168] A. Five or six.

Q. Five or six? A. Five or six.

Q. Okay.

What do they do? A. They deal directly with the men. They have a group assigned to them for a district, and actu-



*Kenneth Price—for Employer—Direct*

ally any complaints the men have or anything that goes on in the stores or any news to pass along in the way of promotions or contests or any of this sort of thing, they contact them, they talk to them about it. They keep them appraised of what's going on.

If the distributor has a problem in the store, he may lose the account or has a battle with the manager of the store, sometimes gets thrown out or various things happen in the stores, and the distributor will speak to him about it and he will go out and see what he can do about getting the account back or settling whatever the differences are.

Whatever the problems might be.

Q. What else would he do, the distributor representative?

A. If the distributor wants him to, he will go out on his route with him, trying to get more space for him, working with him to try and sell more items, and try to help him get his sales up.

[169] Q. You said if the distributor— A. He does this at the request of the distributor.

Q. Excuse me? A. He does this at the request of the distributor.

Q. Would he do it on his own initiative?

Mr. Rosenberg: Objection. Calls for a conclusion.

Mr. Dicker: No, it doesn't. It's a fact.

Mr. Rosenberg: It calls for a conclusion. He says, would he do it on his own?

Hearing Officer: Can you change the phrasing, have they?

Would you object to that?

Mr. Rosenberg: I wouldn't object to that.

*Kenneth Price—for Employer—Direct*

Q. Have the distributors representatives, without being requested by the men or the distributor, gone out on the route in the manner you described? A. Would you repeat that again?

Q. Have the distributors gone out on the routes with the distributors, without being requested to do so by the distributors? A. Not to my knowledge.

Q. What else would the distributor representative do? A. From time to time, they will train new distributors when they come in.

Mr. Rosenberg: Did you read the cases that I had cited, [170] Mr. Kendellen?

Off the record.

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Q. (By Mr. Dicker) How long is that training period? A. Generally, two weeks.

Q. We will come back to that in a little bit. What else would he do, other than the things you described, that is, the distributor representative? A. After they have trained a man—

Q. I didn't ask you that.

Go ahead. I am sorry. A. After they have trained a man, they will sometimes follow up, if the man needs help later.

Q. What do you mean, if a man needs help? A. If a man, just after his two week training period, goes out alone, and

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he doesn't seem to be able to handle it properly, he will speak to the man who trained him, and ask him what he is doing wrong, can he help him and so forth. And he will go out and give him a hand and try to train him further on the things that he is falling down on.

Q. What else does the distributor representative do? A. Sometimes, he may run a route for a man who is out ill [171] or on vacation, upon request of the man to have it done.

Q. To your knowledge, does a distributor representative run a route in that matter, where the man did not request him to do so? A. No.

Q. What else would the distributor representative do? A. I think I have pretty well covered it.

Q. Would he have anything to do with handling customer complaints? A. Yes. There are times that he would do that.

Q. How would he handle a customer complaint? A. If he were asked, either by the distributor, if a call would come during the day and the store would say, "It is an emergency. We would like somebody to come right out here. We would like to talk to him." He would do that.

Hearing Officer: To clarify it for the reader of the record, when you refer to a customer, here, you mean, not a retail customer, but the retail store operator? He is the customer.

A. It could either be a chain store manager. It could be an independent store owner. In other words, a store that's being serviced by the man.

*Kenneth Price—for Employer—Direct*

Q. Does the distributor representative spend most of his time—where does the distributor representative spend most [172] of his time? A. It would be hard for me to state that question precisely where he spends most of his time because he varies so much in the things that he is doing, and I am just not that close to it.

Q. Mr. Price, let's start at the very beginning.

Assuming that you have a route available. How would you go about filling that route? A. Sometimes we have people that are sent in to us, and we have a list of people waiting who want to purchase a route. Personnel manager will generally know what area they are looking for.

Q. What do you mean what area? A. What area.

Q. Geographic area? A. Yes. Geographic area, because people have their preferences in this. He will contact them, and let them know that a route is open in the area that they are interested in, and request that they come in and talk with him, if they are still interested.

Q. Do you ever place ads in the newspaper? A. From time to time, we place ads in the newspaper.

Q. In the help-wanted section of the paper? A. Not in the help-wanted; Business opportunities.

Q. Let's assume that someone—who would be contacted [173] by someone who is interested in a route? A. Mr. Belmont, the personnel manager.

Q. Let's assume for the purposes of this hearing that someone does contact Mr. Belmont, the personnel manager. What happens at the initial meeting between Mr. Belmont and this particular man?

Mr. Rosenberg: I object to that.

In the first place, it calls for hearsay.



*Kenneth Price—for Employer—Direct*

Mr. Belmont can testify as to what he does or doesn't do.

Hearing Officer: Let's see if Mr. Dicker can rephrase the question, so as to overcome your objection.

Q. Are you familiar with what Mr. Belmont does? A. Pretty much so.

Q. How are you familiar with what he does? A. What?

Q. How are you familiar with it; how did you come to be familiar with it? A. Well, I work with him, and he is answerable to me, also.

Q. You were at one time personnel manager? A. Yes, I was.

Q. I will ask the question again. What generally happens when a new outfit, a new person interested in a position, walks into the personnel manager's office?

\* \* \* \* \*

[178]

Q. (By Mr. Dicker) What is the company procedure when a new—

Strike that.

When someone comes to the company, through the various procedures you have mentioned, interested—indicating he or she is interested in a route? A. Mr. Belmont talks with him, interviews him—

Mr. Rosenberg: Object to that. It's the company procedure to have Mr. Belmont do and then I won't object if he characterizes it.

Mr. Dicker: The question was. What is the company procedure? and the witness was answering.

*Kenneth Price—for Employer—Direct*

He doesn't have to say the company procedure is. It's in response to the question.

Mr. Rosenberg: He said what does. I don't object to the question as to what the company procedure is, not what a man supposedly does in his absence.

Mr. Dicker: Mr. Rosenberg is objecting to the answer.

[179] After he completes the answer, he can make any motion he wants to.

Mr. Rosenberg: The answer is not responsive to the question. The question was: What is the company procedure? If he states that, I have no objection to the question, what is the company procedure. Don't tell us what Mr. Belmont does, but what is he supposed to do, and that was my objection.

Hearing Officer: Mr. Rose, I will direct the witness what to tell, and you direct your objections as to anything that Mr. Price has to say to me, please.

Mr. Price, what is the context in which you were speaking, a response to Mr. Dicker's question, that the company procedure is what you are describing now?

The Witness: Yes.

Hearing Officer: Would you proceed, please, with your answer.

A. He interviews and has just a general talk with him about the business, the background of the business.

Q. What business, be more specific. A. Of the business of being a distributor for Lorenz Schneider. And he has

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him fill out a—first, they read a set of guidelines. They are given a set of guidelines to read.

\* \* \* \* \*

[187] Hearing Officer: I have no need to play words. Even with your objection, the exhibit is received.

(Document referred to marked Employer's Exhibit No. 2 and received in evidence.)

Hearing Officer: Back on the record.

Mr. Dicker: May we have a brief recess?

Hearing Officer: Yes.

(Short recess taken.)

Hearing Officer: Back on the record.

Q. (By Mr. Dicker) Mr. Price, if at the conclusion of the interview, the—

Mr. Rosenberg: I will object to the form of the question before he gets any further. He's got the word "if" thrown in there. Now, it's going into speculation.

Q. What else is supposed to—in accordance with company procedure, what else happens during this interview?  
A. Mr. Belmont has a set of cards which also outlines the whole subject of the purchase of a route, what the volume would be, the amount of money, the profit that can be made

*Kenneth Price—for Employer—Direct*

on the route, the approximate profit on the route, complete set of cards dealing with—

Q. Go ahead. A. A complete set of cards. It's similar with what you have there, sir, except it's a little more picturesque. It also goes into further depth.

[188] Q. Depth about what? A. As to how we arrive at the cost of the route—

Hearing Officer: I am sorry, Mr. Price. You made a reference to what you have there. To what who has?

The Witness: The guidelines.

Q. You mean Employer's Exhibit 2? A. Yes.

Hearing Officer: You are saying the information contained in some cards that Mr. Belmont has, is similar to the information that's in this?

A. Yes. Except that it goes into greater depth.

Q. What kind of cards are these? Index cards? A. No, they are maybe twelve or fourteen, something like that.

Q. Twelve or fourteen what? A. The cards.

Q. What size are they? A. Individual cards.

Hearing Officer: Inches, you mean?

A. Twelve or fourteen inches. And they are flip cards. And a—and each card, of course, deals with a separate item concerning the route, purchase of a route, also tells about past experiences that other people have had.

Q. Anything else happen during this interview? A. He has many—he has him fill out a balance sheet.



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[189] Q. He has who fill out a balance sheet? A. The prospective purchaser.

Q. Each prospective purchaser? A. That's right.

Q. I am going to show this document and ask you whether you can identify it? A. Yes.

Q. What is it? A. This is the balance sheet I am talking about, that lists assets and the liabilities of the prospective purchaser.

Q. Is the balance sheet—is that balance sheet the prospective purchaser would make out? A. This is it.

Mr. Dicker: I offer that an Employer's Exhibit 3.

Mr. Rosenberg: No objection to this.

Hearing Officer: You have no objection?

Mr. Rosenberg: I have no objection.

Hearing Officer: There being no objection, it's received as Employer's No. 3.

(Document referred to marked Employer's Exhibit No. 3 and received in evidence.)

Q. (By Mr. Dicker) What, according to the company's procedures, happens after the balance sheet is made out?

A. He gives two tests, and an arithmetic test and a, [190] a Wonderlich Test, which is sort of a general intelligence test.

Q. Then what happens? What is supposed to happen, according to the company's procedures? A. Well, if he passes the tests, and looks like he would be able to handle the route, his balance sheet is favorable, they chat a little more. He answers any questions that the prospective pur-

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chaser wants to know, and in general discusses the particular route that's in mind, the territory, the accounts, the number of accounts and so forth, and then what they generally do is make—

Q. What would he discuss about the territory and the accounts? A. Well, that the man would know the general territory of the route, of where the accounts are, the particular physical area they would be in.

Mr. Rosenberg: The record is clear that his testimony is to company procedure, at least, what he told Mr. Belmont to do.

Hearing Officer: That's correct.

Mr. Rosenberg: But not necessarily what the company did do. It's only what he told him to do. Do I understand correctly, that it's the gist of all these questions?

Hearing Officer: Yes, you do.

Mr. Dicker: We are not stipulating the company [191] doesn't do it.

Mr. Rosenberg: His testimony is that this is the company procedure.

Mr. Dicker: Yes, sir.

Mr. Rosenberg: All right.

Hearing Officer: Proceed.

Q. (By Mr. Dicker) You were talking about the description of the route. A. Yes, the physical territory. And the accounts that the prospective purchaser would be purchasing.

Q. What do you mean "the accounts", by name? I don't understand what it means. A. Yes, by name. There is a—

*Kenneth Price—for Employer—Direct*

every route is set up and there are territories, generally speaking, but within that territory, he has certain number of accounts.

Now, he doesn't buy that territory. He buys the accounts. All this is discussed with the man.

Q. At this initial meeting? A. Yes. It could be possible that a man may not have time to go into that. He may have taken a little time off work to come in and talk and have to get back, but then they would have a subsequent meeting.

Q. So these discussions would occur either at an initial meeting or at a subsequent meeting? A. Yes, all this is prior to any time a man would go [192] out on a route.

Q. What else is the company's procedure—what else, according to the company's procedure, should be discussed at the initial stage—these initial stages? A. I think that a pretty—I think that I pretty well covered it. We also put a check on the man. We investigate him, that is, his references, places he worked, places of employment, in the neighborhood. We have a private investigation firm to do that.

Q. Just one moment.

After the investigation is completed, and the balance sheet is filled out, and the individual is ready now to begin on the route, is there any—the company proceeds to call for any further discussion with the individual? A. They generally, the next step would be to set up a date for the man to come out and ride on the route for a day, just to get a general idea whether or not he is sure he likes the business.

Q. Okay. What's the step following that? A. Then it's up to the man to make known that he is satisfied, he would like to go ahead with the transaction.

*Kenneth Price—for Employer—Direct*

Q. Is there any discussion as to the economics of the transaction, up to this point? A. Yes.

[193] Q. When is that discussion held? A. That could take place at the first or second or maybe sometime after, even the third meeting.

Q. Would it be before or after he went on the route to see whether he liked it? A. That would be before he went on the route.

Q. Tell us what the discussion is with respect to the economics? According to the company procedures.

Mr. Rosenberg: Wait a minute.

Is he asking for the company procedures?

Hearing Officer: As he just said, yes.

Mr. Rosenberg: All right.

A. They discuss the size of the route, the volume of the route and the purchase price of the route is based upon the 52-week average of the volume of sales of the route.

Q. The purchase price is based on 52-week—

Mr. Rosenberg: I think—Is he repeating the testimony?

Mr. Dicker: I want to make sure I understand it.

Hearing Officer: Let him finish.

Mr. Rosenberg: I object to the answer being repeated by counsel.

Hearing Officer: I think we are seeking clarity here, Mr. Rosenberg, and I am going to ask you to restrict your objections until everybody is finished, please.



*Kenneth Price—for Employer—Direct*

[194] A. The 52-week prior to the purchase of the route.

Q. What is the 52-week procedure? A. 52-week average. If it breaks down, whatever it is, in 52 weeks, that the route is worth \$2,000, we will say, for argument's sake, then we figure on a ten to one basis for the 52-week stops, meaning that if a stop does a dollar's worth, ten dollars.

Q. That's average per week? A. That's right.

Hearing Officer: Over the last 52 weeks?

The Witness: That's right. In the case there may be stops that hasn't been services for 52 years, then we also have a chart which is in our agreement, telling what stops are worth, at 39 weeks, at 26 weeks, it's analyzed right in the agreement.

Q. Well, we will come to the agreement in a moment.

\* \* \* \* \*

[197] Mr. Rosenberg: Just ask him if that is gross sales.

Q. Is that gross sales or net sales? A. That's gross sales.

Q. So that the purchase price of a route would be ten dollars times every average dollar, weekly average dollar of gross sales? A. That's right.

Q. What else is supposed to be—what else do the company procedures call for to be discussed at this point, concerning the economics? A. Matter of the amount of down payment.

Q. All right. A. And—

Q. Is there any discussion as to the percentage of the dollar amount of down payment? A. The matter of the

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down payment, I mean, which varies according to the person. Various people want to give out more than others, and I don't think we have any actual percentage. We have never based on an actual percentage that has to be paid as a down payment.

Q. Is there always a down payment, Mr. Price? A. Sir?

Q. Is there always a down payment? A. There is always a down payment, yes.

Q. Well— [198] A. As I said, it varied. We have even had somebody buy a route on cash, all the way.

Q. You had one individual buy a route for all cash? A. All cash.

Q. Did you ever have an individual come in and make a nominal down payment? A. Yes, we have.

Q. What do you mean by nominal? Ten dollars, I am talking about? A. No, nothing like that. \$5,000.

Q. Is that the smallest down payment you can recall?  
A. From any purchaser coming in from the outside—

Mr. Rosenberg: That was not the question. The question was—

Hearing Officer: He is clarifying his answer.

A. From my purchaser coming in from the outside—

Q. Go ahead. A. —the smallest down payment we have ever accepted is \$4500.

Q. We will come—on occasion—your answer indicates that on occasion people already, either own routes or work for you in some other capacity, sometimes purchase routes? A. Yes.

Q. We will come to that in a moment. Now, do you [199] discuss with the potential purchaser, or is it company pro-

*Kenneth Price—for Employer—Direct*

cedure to have discussions with the potential purchaser, any other course of doing business, other than the down payment and the total cost of the route? A. Well, at that time, we have to, of course, discuss with him the truck.

Q. What do you discuss with him about the truck? A. They have the opportunity to purchase a truck or lease a truck from outside or anywhere that they please, and if it's leased from the Schneider Trucks, we discuss the cost of what it will be, discuss the lease, also discuss the amount of cost for warehousing and factoring and servicing.

Q. The warehousing and factoring and servicing done by whom? A. By Lorenz Schneider Company.

Q. Those services are paid for by whom? A. By the distributor.

Q. At the conclusion of—anything else that's discussed at or before the time the man takes his first preliminary ride on the route? A. I think that I pretty well covered anything that would be standard procedure in discussing, of course, the men themselves have various questions, I am sure, that they ask, and that would be discussed with them. They are free [200] to ask any questions they want, and we, of course, give the answers.

Hearing Officer: I am not sure if it was covered and I want to make—I would like to inquire if it was, you mentioned the down payment is discussed with these gentlemen. Is the terms for the balance of the purchase price also discussed?

The Witness: Yes.

Hearing Officer: I don't recall if that was covered.

*Kenneth Price—for Employer—Direct*

The Witness: Yes. That's discussed. The number of years mortgage.

Mr. Rosenberg: What's he talking about, mortgage on the trucks?

Hearing Officer: The balance of the purchase price of the route, other than the down payment, after the down payment.

Q. That is discussed at that time? A. Yes.

Q. How it is to be paid and what period of time? A. Right.

Q. What, according to the company's procedure, Mr. Price, happens next? A. When the man and the company are both satisfied, and the man states that he wants to take the route, we set up a time for him to come in and see Mr. Belmont and at which [201] time a probationary contract is signed.

Q. Probationary contract? A. That's right.

Q. Let me show you this document and ask you whether you can identify it? A. This is it.

Q. What is it? What did I show you? A. You showed me the probationary agreement between the purchaser and Lorenz Schneider Co.

Q. How long has the particular document I showed you been used? How long has that been used? A. We have been using this particular type of thing for at least three years.

Q. What about the particular document I showed you? A. And the particular document since August of 1971.

Q. Prior to that, you used what? A. We used something similar to this. There may have been some revisions in wording.



*Kenneth Price—for Employer—Direct*

Mr. Dicker: I would like to offer—I would like to have marked and then offer the document referred to as the probationary contract, as Employer's Exhibit No. 4.

(Document referred to marked Employer's Exhibit No. 4 for identification.)

[228]

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Q. (By Mr. Dicker) Mr. Price, after each individual signs the document or documents in evidence, Employer's Exhibits 4A through 4T, in accordance—according to company procedure, what would happen next? A. He would go on to the route and be trained by a trainer.

Q. Trained by who? A. A trainer.

Q. What is a trainer. A. Whoever is assigned to train a man on a route, to teach him the business.

Q. Who is assigned, generally? A. It could be a DR.

Q. A what? A. DR.

Q. What is a DR? A. A distributor representative, or an assistant DR.

Q. Okay. A. He would be trained for two weeks.

Q. He would be trained for two weeks A. That's right.

Q. On a daily basis? A. That's right.

[229] Q. Then what would happen according to company procedures? A. Then he would go on his own, and during this time, during the entire period of time he would be running this route just as if he had signed a formal contract.

*Kenneth Price—for Employer—Direct*

From time to time, the trainer might get on and follow up with him to see how he is going, see how he is coming along, if he can be of any further assistance to him during that time?

Q. How long does this preliminary or training period continue? A. For whatever length of time is on the probation contract.

Q. Whatever is provided for in the documents, 4A through 4T? A. That's right.

If for any reason in the meantime that man feels that he would like to take over on a regular basis, on a regular contract, he can do that, too. He can do it any time—

Q. He can do it early? A. Yes.

Q. That would need mutual consent? A. That's right.

Q. By the way, how is the man paid during this period [230] of time? A. Exactly as the same as he had been paid if he were—had signed a regular contract.

Q. He is paid— A. A formal contract.

Q. He is paid in accordance with the terms of the yet to be signed formal contract, right? A. That's right.

Q. What would be the company procedure if the individual who signed one of these documents, decided he didn't like it? A. In the event that the fellow said that he didn't like it, he wasn't satisfied and he didn't want to continue?

Q. Yes. A. He would then have to pay for the training period, and he would be released from all responsibility.

Q. What happens if the company decides that he is not the kind of man that they want? A. Then, he wouldn't have to pay for the training fee, and he would just have to settle up whatever he would owe the company, and he would be out.

*Kenneth Price—for Employer—Direct*

Q. What happens to this initial deposit sum? A. It's returned to him.

Q. In either event? [231] A. That's right.

Q. At the end of the period provided for in Employer's Exhibits 4A through 4T, and assuming both the individual and the company are satisfied with each other, what happens then? A. Then we enter into a formal contract.

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[250]

Hearing Officer: What was the reason that certain individuals who did sign 5E—5A through 5E, did not sign—

The Witness: The answer is that when we first went into selling of routes, a lot of these men were employees, and were running their routes, and they purchased their routes, but they didn't have to sign a probationary period contract.

Hearing Officer: To the best of your knowledge, does that apply to all the instances of failure to sign a probationary—

The Witness: When routes were purchased directly from the company, yes.

Hearing Officer: But if you don't know, I mean, that is what you should say. Do you know if that explanation applied to all of the instances in which the probationary agreement was not signed?

The Witness: I don't know.

Hearing Officer: Okay.

Mr. Dicker?

Q. (By Mr. Dicker) Mr. Price, now, I am really [251] confused. I believe you said, at one point that, I think one

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time you said you don't know, and another time, you said, yes, when all routes were purchased from the company.

Is there a procedure whereby routes are not purchased from the company? A. Yes.

Q. Let's put that procedure aside. There was a time when the company did not have any individuals known as distributors; is that right? A. That's right.

Q. It had a—when was that, up to what time? A. To the early part of 1967.

Q. At that time, the individuals who drove on these routes, what was the title they had, up to early '67? A. Route salesmen.

\* \* \* \* \*

[252]

Q. Now then do the distributors—how do the distributors transport the product to the retail customers? A. By curbside truck.

Q. By a truck? A. Right.

Q. How do they come to get a truck, or acquire a truck? A. They can either lease a truck, buy a truck.

[253] Q. They can either lease it or buy it; is that right? A. That's right.

Q. Do you know how—approximately or exactly, if you know—how many distributors have purchased a truck?

A. I would say—

Mr. Rosenberg: Just a moment. Hold it a second.

I wouldn't object to the question if he will be less general.

Is he referring to the 55 men, now?



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Mr. Dicker: Now.

Mr. Rosenberg: If he limits it to that, I have no objection.

Hearing Officer: That understanding is on the record.

Mr. Dicker: I thought the understanding was on the record.

Mr. Rosenberg: I didn't recall. I withdraw the objection.

Mr. Dicker: I am just talking about the approximately 55 men, present distributors who are in controversy here.

A. I would say twelve or fourteen.

Q. Purchased trucks? A. Yes.

Q. From whom—

[254] Mr. Rosenberg: Purchased?

Mr. Dicker: Purchased.

Mr. Rosenberg: With a "d" at the end of that?

Mr. Dicker: Purchased.

Q. From have they purchased trucks? A. Some from the Schneider Truck Company and others from other sources.

Q. Have they all purchased them from the Schneider Truck Company? A. No.

Q. What's the relationship of the Schneider Truck Company to Lorenz Schneider, the employer here? A. Schneider Truck is a separate company.

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Q. What's its relationship to Lorenz Schneider Inc.? It's corporate relationship? A. I don't understand the question.

Mr. Rosenberg: Ask him if it is a subsidiary?

Q. Is it a wholly owned subsidiary of Lorenz Schneider, Inc.? A. Yes.

Mr. Dicker: A leading question.

Mr. Rosenberg: I don't object to your questions, but his understanding.

Mr. Dicker: Okay.

Q. (By Mr. Dicker) Now, let's talk about purchasing [255] a truck.

When men purchased—when the distributors purchased their truck, either from Schneider Company, or from some other source, were there any requirements with respect to that truck, vis-a-vis its size or its coloring? A. No requirements as to size. No requirements as to coloring, except it was suggested—

Q. Go ahead. What's suggested? A. That they would paint it with the regular Wise logo, that they didn't have to, no one was ever told they had to.

Mr. Rosenberg: I object to that as to calling for a conclusion as to no one has told them. There will be testimony here over here offered by 23 people that they were told

He can't testify for others, only for himself.

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Mr. Dicker: He is testifying as far as he knows. The company's procedure is not to require it, but to suggest it.

Hearing Officer: He is testifying as to what he knows.

The Witness: The Wise Company offers \$175 toward the painting job, if anyone wants to paint it that way.

Q. The Wise Company? A. Yes.

. . . . .

[257] Q. Does the Borden Company own any stock of Lorenz Schneider, Inc.? A. No.

Q. You said there is an allowance for the painting that was offered by Wise? A. Yes.

Q. Not Lorenz Schneider? A. No.

Q. Now, what about, you said that twelve or fourteen trucks were purchased outright. How are the remaining trucks acquired by the distributors? A. Leased.

Q. From whom are they, in fact, leased? A. To the—

Q. From whom?

Mr. Rosenberg: Schneider Truck Company. You asked him that before.

Q. From whom? A. From Schneider Truck.

Q. Are they all—

Hearing Officer: Would you spell Schneider?

The Witness: S-c-h-n-e-i-d-e-r.

Hearing Officer: All right.

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Q. Are all the trucks leased—are all those trucks that are leased, are they all leased from Schneider Truck?  
[258] A. Yes.

Q. Let me show you this document, and ask you whether you can identify it?

Mr. Rosenberg: Do you have more than one, or are they all the same? Do you have just one copy?

Mr. Dicker: I just have one copy. This is the one we used since '69.

Mr. Rosenberg: Offer it, and I won't object.  
Not even a voir dire.

Mr. Held: You just want lunch.

Mr. Rosenberg: No.

Q. Can you identify that? A. Yes.

Q. What is it? A. It's a lease that's used when a man leases a truck, from Schneider Truck.

Mr. Rosenberg: Do you know—

Off the record, can I say something off the record?

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: Back on the record.

Mr. Dicker: He said, "I would like to have marked and offer the document identified as the truck lease between Schneider, Inc. and the individuals who have leased trucks from Schneider, Inc."

[259] Mr. Rosenberg: No objection.

Hearing Officer: Have you offered it for evidence?

Mr. Dicker: Yes, I am.



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Hearing Officer: There being no objection, it's received as Employer's 6.

(Document referred to marked Employer's Exhibit No. 6 and received in evidence.)

Hearing Officer: Before we get any further away from it, I just want to clarify one thing for the record.

You stated approximately twelve to fourteen trucks are owned, some are bought from Schneider, some are bought from other sources.

Before we get away from it, do you know how many were bought from Schneider and how many were bought outside?

Mr. Rosenberg: Do I understand your question as limited to the 55 present distributors?

Hearing Officer: Of course.

Mr. Rosenberg: Just wanted to make sure. The way you asked the question, it could have been for the last two years.

The Witness: I don't know the exact number.

Hearing Officer: Okay.

Mr. Rosenberg: Why don't you ask him to bring that information tomorrow.

. . . . .  
. . . . .

[260]

Q. (By Mr. Dicker) Now, Mr. Price, where are the trucks operated by the distributors left overnight?

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Mr. Rosenberg: I object to that unless he specifies whether he means leased trucks or all trucks.

Mr. Dicker: I am asking all trucks.

Mr. Rosenberg: All trucks?

Mr. Dicker: All trucks.

The Witness: The leased trucks are kept on the premises.

Q. Whose premises? A. Lorenz Schneider premises. And the ones that are privately owned are kept wherever the fellow wants to garage them, wherever the distributor who owns it wants to garage it.

Q. Do any of the distributors who own trucks keep their trucks on the Schneider premises? A. I believe one who owns—rents—he keeps it there but he rents space and pays for the space.

Q. One individual rents the space? A. Yes.

\* \* \* \* \*

[262] Q. Anything else that is leased, first.

Other than the trucks? A. No.

Q. Other than the truck and the product, that is the snack foods, is there anything else that is purchased by the distributor? A. Yes.

Q. Tell us what that is? A. Floor stands.

Q. What are floor stands? A. Floor stands are what they put in the store where they display their merchandise.

Q. From whom are these floor stands purchased?

Mr. Rosenberg: Did you say purchased or leased?

Mr. Dicker: Purchased. Leased, he said, no. Purchased. Purchased.

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A. The men are told that they can purchase them anywhere they want. We carry them in stock for anyone that wants to purchase them at cost.

Q. Anything else that is purchased? A. Shelving, which is also for display.

Q. From whom is the shelving purchased? A. Under the same condition as the floor stands.

Q. Anything else that is purchased? A. Sales pads.

[263] Q. From whom are the sales pads purchased? A. Well, also, at cost from Schneider, Lorenz Schneider.

Q. All sales pads are purchased from Lorenz Schneider? A. No. There have been sales pads made up privately, and have been purchased directly from the company that makes up the pads.

Mr. Rosenberg: I don't understand that.

Made up privately on whose behalf, by the company?

The Witness: No, on behalf of the men.

Mr. Rosenberg: You mean the men went to their own printers?

The Witness: No, they didn't go to their own printers, but they asked or requested that they be printed up by the same printer that supplies us.

Q. They asked the printer to print it up for them? A. There was a notice put on the wall for anybody that wants them printed up, that they could have them printed by the same printer.

Mr. Rosenberg: I didn't understand him to say which wall, whose wall?

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The Witness: In the sales room.

Mr. Rosenberg: Of the company, I presume?

The Witness: The company sales room.

Q. Now, Mr. Price, are all the routes the same, in the sense that sales are made to the same kinds of customers?

[264] A. Basically, there are two types of routes.

There is a route that consists of chain stores only, or originally were set up that way, and there are independent routes, independent stores

Q. Approximately, if you can tell us, what's the breakdown between, presently, between the independent routes and the—let me rephrase that.

What percentage of your routes, if you know, sir, are independent, and what percentage are primarily chain?

A. I don't know, exactly.

Q. Approximately? Do you have any idea? A. I would say possibly sixty percent independent, against forty percent chain.

Q. Let's talk for a moment about the so-called independent routes. Give us what the procedures would be in a normal day of a distributor, starting from the beginning of the day until the end. A. Generally speaking, the truck is already loaded on the night before.

Q. Who loads it? A. It's loaded by the distributor.

Q. The distributor, himself? A. Yes.

Q. How does he go about getting merchandise? To load on the truck?

\* \* \* \* \*

[265]

Q. Do any of your distributors sell products which Lorenz Schneider does not act as a distributor for? A. Yes.



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Q. From their trucks? [266] A. Yes.

Q. What types of products, if you know? A. Well, I know one fellow sells tomatoes, and various vegetables. Another one sells canned apples, cotton candy. Those are the only items that I definitely know. Although I am told there are others.

Mr. Rosenberg: Objection. Told by others.  
Isn't that hearsay.

Hearing Officer: It's hearsay.

Mr. Dicker: I admit it is hearsay, but that doesn't mean it's not admissible.

Hearing Officer: We will strike the reference to being told by others, if it's something he has been told by others, we will put it in that way.

Mr. Dicker: I again—I take an exception to your ruling, Mr. Kendellen. Hearsay evidence is admissible in these hearings.

Hearing Officer: That's not the ruling. That particular statement is struck from the record.

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[267]

Q. Before we even get to the first stop, do all of the distributors—how many warehouses does Lorenz Schneider have? A. Two.

Q. Where are they located? A. One in Riverhead. One in New Hyde Park.

\* \* \* \* \*

Q. So that, if a man wanted any particular items or needed any particular items, he would pick them up at

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[268] one or the other warehouse, a distributor? A. Not all of them.

Q. Not all of them? Some of them do not pick up the product which they sell, some of the distributors do not pick up the product which they sell, on the route, at New Hyde Park or Riverhead warehouses? A. That's right.

Q. How do they operate? A. They are in a warehouse of their own.

Q. Some of the distributors have their own warehouse? A. That's right.

Q. Don't they, at least, at one point or another, get products from New Hyde Park or the Riverhead warehouse, to stock their own warehouse? A. It might be sometime during an emergency only that they would. If they—that they would come over and get it.

Q. Where do they generally get their products from? A. They have it sent in direct.

Q. Direct from whom? A. From the manufacturer.

Q. Which is? A. From all the manufacturers.

Q. All the manufacturers? A. Yes.

\* \* \* \* \*

[288]

Q. Now, sir, would you answer the question?

Is there a suggestion of the company that the men must fill out these forms?

Mr. Dicker: Again, I have difficulty in conceptualizing that a suggestion is a requirement.

Hearing Officer: Be clearer in your question, Mr. Rosenberg.

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Mr. Dicker: Either it is required or suggested.

Mr. Rosenberg: I will do exactly what you say. I am going to read it right from the decision.

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Q. What is the suggestion of the company at the time these men are hired, or the men are put on a route, the time they are taken on by the company?

Hearing Officer: With respect to this form?

Q. With respect to this form? A. At the time that the man is taken on, I mentioned before, that a background of the business is given to the men.

Now, we have established it through the years and how it's been built up to a successful business, and we[289] only suggest these various things. This is the way we have operated in the past, and we suggest this has been a pattern of success.

Q. Do you suggest to the distributor that they fill out this form, when leaving the customer's premises, after filling an order? A. We suggest that, yes.

Q. You do? A. Yes.

Mr. Rosenberg: I have no objection to this form, with this one observation.

This is not the only form used by the company. As one of the forms suggested that they follow, I

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have no objection to it being marked in evidence, as whatever exhibit it may be.

Did you give me a copy?

Mr. Dicker: I don't have a copy.

Mr. Rosenberg: I object to it until I get a copy.

Let him bring it to him. Withhold the offer in evidence.

Mr. Dicker: We will supply a copy tomorrow.

Mr. Rosenberg: Mark it as an exhibit for identification. Tomorrow, supply a copy and offer it in evidence. I want a copy for my files, too.

\* \* \* \* \*

[303]

Q. Who suggests those sale prices per dozen? On—  
[303] whose suggestion is it that the sales price per dozen for the first item be, I think it is 90¢? A. Yes.

Q. Who makes that suggestion? A. The manufacturers.

Q. It's the suggested sales price from whom to whom? Who should sell it to who at that price? A. The distributor should sell it to the merchant.

Q. Again, let me remind you, I am talking, at least for the time being, about the so-called route servicing independent customers. Are you aware of any instances where the suggested sale price is not followed? A. In many instances, it is not.

Q. What is done? How is that—how is that price changes? A. Well—

Mr. Rosenberg: Objection. Calls for a conclusion of this witness. Self-serving.



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Q. Do you know how it is done, tell us?

Hearing Officer: He is stating a fact.

Mr. Rosenberg: Want to prove it? Ask him did he see it done?

Hearing Officer: Mr. Price is the company's—Mr. Price is the company's witness on the operation of the company in this area, and you will have the opportunity to [304] cross examination his testimony, Mr. Rosenberg.

Mr. Rosenberg: Thank you for that opportunity.

Hearing Officer: You don't have to thank me. It is your right.

Mr. Rosenberg: No kidding?

Q. (By Mr. Dicker) Mr. Price?

Hearing Officer: Mr. Rosenberg's last comment is struck.

Go ahead, Mr. Dicker.

Mr. Dicker: Physically struck?

Hearing Officer: Struck from the record.

The Witness: Ask your question.

Q. The question is, you said that, I believe, that the suggested prices are changed by the distributor.

Does he make out a separate form, or what does he do to change the price, if you know? A. Well, I definitely know that some of them strike a line through the suggested price, and put their own price in there.

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Q. How do you definitely know that? A. I have seen the sales slip.

Q. Now, you indicated that the distributor uses or it is suggested that he uses the route book—

Strike that.

\* \* \* \* \*

[306]

Q. When the distributor comes in to load his truck, what, if anything, do the warehousemen do? A. When the man comes in to load his truck, first of all, he checks his order, to make sure that everything is there, and when he is satisfied that it is, he signs for the order, and then he loads his truck with the assistance of one of the warehousemen who handles the items of merchandise as he requests.

Q. Does the company have any rules or regulations as to what should be put on the order form, the quantity?

A. No.

Q. Does the company instruct the distributors as to what to place onto the order form? The quantity of a particular item? A. No.

Q. Does the company instruct the distributors as to what products to put into a particular retail outlet? A. No.

Q. Now,—are there any other books or records which the company suggests that the distributor keep or make out?

A. We have what's called a brown book, a brown book—

Q. Also referred to as the customer's book? A. Which is called a customer book, and in which the sales are recorded. This also is originally in five [307] different books, matching the route book, that is, the black book, and the procedure has always been that when the—when they finish their route, come in at night, they fill in the customer book.

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And they enter the sales from their sales ticket to the customer book.

\* \* \* \* \*

[312]

Do the distributors pay any—make any monetary payment at all to Lorenz Schneider, with respect to any portion or portions of the warehouse? A. Yes, they do.

Q. What payment do they make? A. They pay what we call a \$50 a week warehouse and servicing charge.

Q. Do all the distributors make that payment? A. All those that are located on our premises.

Q. That would be all except those two that have their own warehouse? A. Yes.

Q. Do they make any payment? A. No.

\* \* \* \* \*

[339]

Do you still beat your wife? Now would you answer that one? That's the same thing here. Does the company have a rule or procedure in regard to the solicitation of new customers.

I will withdraw the objection. I don't think it is important. It's withdrawn. A. The answer is no.

Q. Have distributors on independent routes obtained additional or new customers? A. Yes.

Q. Have they been required to make any payment or any other kind of remuneration to the company when they do obtain such new customers? A. If they solicit it, pick the customer up, no.

Q. Again, talking about the independent routes, the distributors, who collects the money for the Lorenz Schneider—excuse me,—for the product which is sold to the retailer?

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Mr. Rosenberg: Which is that?

Mr. Dicker: Independent. Who collects the money?

A. The distributor.

Q. The distributor collects it? A. The distributor collects it.

Q. Who is responsible for any bad—for the—  
Strike that.

[340] If the distributor—may the distributor accept checks? A. Yes.

Q. May the distributor again talking about independent routes, extend credit? A. He may.

Q. Does the company have any restrictions on the kind of credit or kind of checks—does the company have any restrictions with respect to the kind of checks that may be accepted by the distributor? On the independent routes, that is? A. No.

Q. Does the company have any restrictions with respect to the kind of credit that may be advanced? A. No.

Q. If the distributor accepts the check and the check, subsequently, is dishonored—do you know what dishonored means? Not paid, bounced. A. Bounces?

Q. That's right.

Who, if anyone, is responsible for that check? A. The distributor.

Q. Does the company reimburse the distributor for that amount? A. No.

[341] Q. In whole or in part? A. No.

Q. If the distributor extends credit to a customer, again, we are talking only about the independent routes, and that



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customer eventually—retail customer—does not pay, who stands that loss? A. The distributor.

Q. If the distributor is held up on his route, and cash or other valuables are stolen—

Strike other valuables.

Cash receipts from customers are stolen, does the company in any manner reimburse the distributor? A. No.

Q. Now, again, talking about the independent routes. You told us that the distributor collects the cash or check or extends credit to his independent customers along his route; is that right? A. Right.

Q. What procedure is used for—

Strike that.

Does the distributor, at some time or other, pay Lorenz Schneider for the merchandise that he has loaded on his truck, on the daily basis you earlier described? A. Yes.

\* \* \* \* \*

[402]

Mr. Rosenberg: That's the only thing I want struck. [403] The remark he made about rebate was erroneous and my side remark to you, which Mr. Kendellen took umbrage about, was that you and I know that he is mistaken in that he is not familiar with it, and you came to the same conclusion after the rebate by withdrawing it, and I consent to it being withdrawn, because I think we all want to get it clear, the clear picture before the Board.

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Mr. Dicker: I don't want to comment on what you say, sir. I don't want to get involved on what basis I came to any conclusion.

You can make any observation you want to.

Mr. Rosenberg: For whatever reason, I consent to it as long as the remarks about rebates be stricken with your withdrawal.

Mr. Dicker: That's agreeable.

Hearing Officer: They are struck.

Mr. Price's remarks about rebates are stricken.

Q. (By Mr. Dicker) Mr. Price, yesterday, you discussed at some length the procedures by which the distributors go in to and out of either the independent route stores, so-called independent stores and the so-called chain stores, chain store route stores.

Let's talk about—

Strike that.

Does the company have any requirement as to what time [404] the distributors report to work? A. No.

Q. In other words, the distributor can report to work at any time he wishes? A. Yes.

Q. He may report to work at three o'clock in the morning? A. The place is not open at three o'clock.

Q. When does the warehouse open? A. Four o'clock.

Q. Four a.m.? A. Yes.

Q. And he can report to work any time after four a.m.? A. Yes.

Q. If he has his truck located other than the warehouse, do you know what time he, in fact, does begin work? A. No.

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Q. What about at the end of the day, what about returning to the—except for those two distributors that have their own warehouse, they all return to one or the other of the two warehouses at the end of the day? A. Not all.

Q. Who else, besides those two who—would not return at the end of the day? A. Some of the men in Riverhead, I know, don't return at [405] the end of the day.

Q. How do they get their vehicle loaded for the next day? A. In the morning.

Q. They get it loaded in the morning? A. Yes.

Q. Would that be true for some men who work out of New Hyde Park as well? A. Yes, but they don't necessarily always get it loaded in the morning. They may have other merchandise. They have stored at their home, or get a load in the afternoon.

Q. Okay. A. In other words, they had been carrying enough on their trucks.

Q. So that some distributors may not even return for a new load the next day? A. They may not.

Q. Those that do, in fact, leave their trucks at the warehouse, are they required to return by any particular time? A. We have a closing time of six-thirty.

Q. So the warehouse is open from four a.m. until six-thirty p.m.? A. Yes.

[406]

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Q. What about returning, is there any requirement about what time he is to return? A. As I say, we officially close at six-thirty.

Q. Could you return at noon, if he wanted to? A. Yes.

Q. Could he return at eleven o'clock in the morning? A. Yes.

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Q. What happens if he returns after six-thirty? A. He pulls in to the warehouse, and there is a charge—there is a charge for him returning after six-thirty.

Q. What do you mean, a charge? A. For keeping the employees waiting for him.

Q. In other words, if all the vehicles that are stored at the particular warehouse are not in by six-thirty, what do you do? A. Unless he has a special reason, a breakdown or something of that kind, if it just is habitual that he comes in late, he is charged, and there is a \$15 charge [407] that can be levied against him.

Q. You didn't answer my question.

I asked you what happens if, at the—it comes six-thirty closing time, and all the vehicles that are supposed to be stored or left or garaged at one or the other of the warehouses is not in, do you close the doors and go home? A. No.

Q. What do you do? A. We close the doors, but we don't go home.

Q. Okay.

That's what I wanted to hear. How do you staff your operation at that point? A. They keep two men in the—in the Schneider Truck waiting because the man might have a breakdown with his truck or something, and they wait for any emergency call, until the man comes in.

Q. They keep two men in Schneider Truck until all the vehicles are in? A. That's right.

Q. Or until they hear from all the vehicles, is that right? A. That is right.

Q. Tell us about this charge? What's this charge? A. Well, there is a \$15 charge that can be levied against



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[408] him for keeping men working overtime, waiting for them to come in.

However, if there is a good reason for it, they are never charged.

Q. That's only if they return after six-thirty? A. Right.

Q. Is there any requirement, Mr. Price, that an employee—that any distributor work every day of the week? A. No.

Q. Must he work a minimum of five days? A. No.

Q. Who determines how many days he works? A. He does.

Q. Who determines what time he starts work in the morning? A. He does.

Q. Now, what is the company policy concerning the distributor hiring other individuals to work for or help him?

A. No policy.

Q. You mean he can't do it? A. He can.

Q. He can? A. Yes.

Q. Do you have to interview anyone he hires, first? [409] A. No.

Q. Or does the company? A. No.

Q. Have, in fact, distributors hired people to work for them? A. You are talking about outside people?

Q. People other than Lorenz Schneider employees, yes, outside people? A. They have, yes.

Q. Now, you had indicated that distributors, when they purchased the route, receive a list of customers.

Let's talk for a moment about the independent distributors. By the way, what you have testified to about the hours and the days off, apply to the—to those distributors on independent routes and those on chain stores, as well?

A. Yes.

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Q. In other words, neither the chain store nor the independent distributors have any fixed hours of employment or fixed working days? A. No.

Q. Now,— A. Could I add one thing?

Q. What? A. Could I add one thing, sir?

\* \* \* \* \*

[411]

Q. Does Lorenz Schneider withhold federal—does Lorenz Schneider withhold in accordance with the requirements of the Internal Revenue Act from compensation or money paid to the distributors? A. No.

[412] Q. No withholding at all? A. No.

Q. Does Lorenz Schneider pay or withhold Social Security on any payments made to the distributors? A. No.

Q. Does Lorenz Schneider cause to have withhold from the distributors any New York disability payments? A. No.

Q. Does Lorenz Schneider—

Mr. Rosenberg: I will concede for the purposes of this record, that the company does not withhold taxes of any kind or comply with any of the payroll taxes imposed for employees under both state or federal regulations.

I will make that stipulation. Including workmen's compensation.

Mr. Dicker: Unemployment insurance?

Mr. Rosenberg: Right. All the payroll deductions usually referred to in the decisions as deductions as the payroll taxes from an employer. You have a Lundi decision that refers to it. I concede that your company doesn't do that with these men.

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Mr. Dicker: Doesn't withhold or pay?

Mr. Rosenberg: I am making the concession. I don't think it is controlling here, but I am making the concession.

[413] Mr. Dicker: Workmen's compensation is not a tax.

Mr. Rosenberg: I am saying the usual deductions and payroll taxes.

Hearing Officer: Okay.

Let's just, to the extent Mr. Dicker wants to spell out the particular possible withholding amounts, let him—

Mr. Rosenberg: If he states them, I concede them.

Mr. Dicker: I take that concession.

The only things I want to add to that is workmen's compensation coverage.

Mr. Rosenberg: If you will tell me they don't do it, I will concede it.

Mr. Dicker: Okay.

Hearing Officer: It's clear on the record.

\* \* \* \* \*

[414] Mr. Dicker: We do not grant paid holidays to these people.

Mr. Rosenberg: I do not.

Mr. Dicker: Paid vacations.

Mr. Rosenberg: You don't pay their vacations. But I will state that your contract calls for certain things in relation thereto, but that you don't pay them for it.

I will concede that.

*Kenneth Price—for Employer—Direct*

Q. (By Mr. Dicker) If an employee, Mr. Price, wants to take a day off, does he need permission?

If a distributor wants to take a day off, does he need permission? A. No.

Q. Does a distributor need permission to take a vacation? A. No.

Q. Now, how—do you know how the distributors cover their routes in the event that they do take a vacation? A. Well,—

Q. Do you know? A. Well, some of them will double up and then take a few days off.

Q. What do you mean, double up? A. Well, they will give the stores heavier amounts of merchandise, so they would be able to skip them for a—[415] for the next trip, in order that they can take a few days off. Others pay one of our promotional men to run the route for them while they are on vacation.

\* \* \* \* \*

[417]

Q. Is there any limit in number of weeks that a man may take? A. Yes. That is as far as the use of one of our promotional men. Although, even after vacations are over, if a man decides he wants to take another week or something, why, he speaks to the operations man, and asks him if it is possible at a later time, or he gives him a week, if it is possible, he would like to have that week, he would like to have a man run his route.

This arrangement can be made and has been made.

Q. After you select a particular time and the—and the right number of people selects and are limited by the num-



*Kenneth Price—for Employer—Direct*

ber of promotional men, what happens next? A. Then the promotional man takes over the running of the route. He turns everything in, he collects on the route.

Q. He turns it in to who? A. In to the cashier, who, in turn, passes it on to the general office manager.

[418] Q. Okay. A. A complete record is kept just exactly the same as it would be if the distributor himself were running the route. The complete reconciliation is turned in.

Q. What happens to the proceeds of the route for that particular week or weeks? A. The proceeds—it's given to the distributor.

Q. The entire proceeds go to the distributor? A. Yes.

\* \* \* \* \*

[420]

Q. Or he can take it on a part time basis, as you indicated, earlier? A. That's right.

Hearing Officer: Are you leaving this area, Mr. Dicker?

Mr. Dicker: The vacation area? Yes.

Hearing Officer: Can I ask one question?

Is there any restriction of any kind on the total number of days that a promotional man can be used if he is available?

The Witness: If he is available, no. There is no restriction.

Q. (By Mr. Dicker) Mr. Price, does the company require that—does Lorenz Schneider require that the distributor Service customers in any particular order. A. No.

*Kenneth Price—for Employer—Direct*

Mr. Rosenberg: What was that, no?

The Witness: No.

Q. Or on any particular day? A. No.

Q. Who decides that? A. In practically all cases, the distributor, but sometimes, the store managers make the decision, too.

Q. You mean the store managers may insist? [421] A. That's right.

Q. Does the company hold meetings with the distributors? A. I will speak good and loud, all right.

Mr. Rosenberg: Yes, I want to hear the answer.

A. The DR's have meetings with—

Q. That's company representative, the DR? A. Yes. From time to time, also when there are promotions going to be—when they are going to have promotions, it's explained to them.

Q. So the answer to the question is, yes, they hold meetings? A. Yes.

Mr. Rosenberg: Don't interrupt the answer. I like the answer. I enjoy it. I think he should be permitted to complete his answer.

Hearing Officer: Mr. Price, have you completed your answer? Do you have anything else to say. If you do, please continue.

A. I don't just recall what the last words were I said.

*Kenneth Price—for Employer—Direct*

Hearing Officer: Mr. Reporter, would you read back exactly what Mr. Dicker's question was, and exactly how much of Mr. Price's response—

(Record read.)

A. That's the end of my answer.

[422] Hearing Officer: Is that satisfactory?

Mr. Rosenberg: If that was the end of it, I am satisfied.

Q. (By Mr. Dicker) Are the distributors required to attend those meetings? A. Asked, only.

Q. What happens if they don't attend? A. Nothing.

Q. Are the distributors required to wear uniforms? A. No.

Q. Mr. Price, the contractor contracts in evidence, Employer's Exhibits 5A through 5E,—5F, all have a provision indicating that the company can, under certain circumstances terminate the contract with the individual.

Are you familiar with those provisions? A. Not completely.

Q. Are you generally familiar with those provisions? A. Generally.

Q. Mr. Price, has any contract ever been terminated, to your knowledge, pursuant to those provisions?

Mr. Rosenberg: I object to that.  
I withdraw the objection.

A. One, for dishonesty.

Q. Other than dishonesty? A. Not to my knowledge.

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*Kenneth Price—for Employer—Direct*

[434]

AFTERNOON SESSION

3:00 o'clock p.m.

Hearing Officer: On the record.

Mr. Dicker.

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Whereupon, KENNETH PRICE, having been previously sworn, resumed the stand and testified as follows:

*Direct Examination (resumed)*

Q. (By Mr. Dicker) Mr. Price, in your earlier testimony you told us about a category known as distributor representatives, and indicate there were five of them; is that right, sir? A. Yes, sir.

Q. Tell us the circumstances under which a distributor representative rides with or accompanies a distributor?

A. Only if the distributor asks him to, or if he volunteers to do it, and the distributor agrees to it.

Q. Does the company require that a distributor have on his truck any time a distributor representative? A. No.

Q. Now, will you tell us what a sales promotion is? A. A sales promotion is a promotion set up by the manufacturers for the purpose of increasing sales, getting volume sales, and giving special prices for this.

\* \* \* \* \*

[436] Mr. Rosenberg: How about asking him to tell us the story involved sales promotions.

I don't want to interrupt you needlessly, but please don't lead him and then stop him and try to explain it for the record.



*Kenneth Price—for Employer—Direct*

Ask the witness, will you please tell us about sales promotions.

I object to the form of the question.

Mr. Dicker: I want to take it—the situation area by area, and I can direct him.

Mr. Rosenberg: You are leading him, and it is objectionable.

Mr. Dicker: I don't think I was leading at all in that question.

Hearing Officer: Can it be reread?

Mr. Dicker: I didn't even finish it.

Hearing Officer: You can't reread a question that hasn't been finished.

Mr. Dicker: I will rephrase it.

Q. (By Mr. Dicker) First focussing your attention on the independent, so-called, independent store routes. How does the sales promotion work with respect to those distributors? A. The merchandise is sold to these distributors at the reduced price. The distributor takes the merchandise out, and what he does with it from that point on is up [437] to him.

Q. Is it your testimony that he does not have to sell to the independent store owner at a reduced price? A. He is not compelled to, no.

Q. May he? A. He may, yes.

Q. Now, let's go to the chain store routes.

Explain to us how the sales promotion operates there. A. The distributor receives the merchandise at the reduced price. Goes out into the stores, and places his promotions out there. He sells to them at the reduced price.

*Kenneth Price—for Employer—Direct*

Q. Is he required to sell to them at the reduced price?

A. He is required because of the fact that these promotions have been arranged for by the manufacturer, and the chain buyers have been contacted and have either agreed to take a promotion or not to take a promotion.

Sometimes, they will say it will be up to the store manager. Other times they say it is a must display. Notify the store managers that all stores must accept these promotions.

Q. So the chain stores salesmen—the chain store distributors are required to sell at the reduced price to the chain stores? A. They would be required to.

[438] Q. Now, is there any—  
Strike that.

Are the promotions fixed in the length of time they take? Does a promotion go on for a year or two years or what?  
A. No. They generally are, I believe, about three weeks. Two to three weeks.

Q. And— A. Can be extended.

Q. After the promotion ends, what happens to the price of the merchandise, as far as the distributor is concerned?

A. After the promotion ends, on the 11th day, or the extra day after the promotion ends, the distributors still receive the merchandise, all they want of it, all that's in stock, at the reduced price.

Q. Prior to the end of the promotion, may the distributor purchase more merchandise than he anticipates at the lower price? A. They can and do.

Q. Can they sell that reduced price merchandise to the stores, whether they be chains or whether they be independents, at a higher price? A. When the promotion is over, yes.

*Kenneth Price—for Employer—Direct*

Q. When the promotion is over? A. Yes.

[439] Q. Do the distributors, in fact, do that? A. Yes, they do. As a matter of fact, there was one distributor who, on two occasions, has ordered a trailerful of it direct to his home, so he would have it in his home and be able to sell it for a long time after that.

Q. That is the merchandise at the so-called— A. He got it as a reduced price and sells it at the regular price when it's over.

Q. Now, Mr. Price, was there—

Mr. Rosenberg: I would like to hear the name of this guy he is referring to.

Mr. Dicker: You can ask him on cross examination.

Mr. Rosenberg: You don't want to ask him?

Mr. Dicker: No.

Q. Now, Mr. Price,—the one distributor you referred to, is he the only one who bought extra merchandise during a promotion to sell after the promotion ended? A. No. Several of them did that.

Q. Now, Mr. Price, did there ever occur an occasion where distributors refused to handle a promotion? A. Yes.

Q. When was that? A. Well—

Q. Approximately? A. Well, maybe when—about six months ago, ten months [440] ago. I don't just exactly recall.

Q. Tell us what happened. A. Well, they weren't satisfied with the deal, so they—it was on Old London products, so they boycotted it.

*Kenneth Price—for Employer—Direct*

Q. What do you mean they boycotted it? A. They just decided they wouldn't take it out.

Q. So, some of the distributors refused to take it out?

A. That's right.

Q. What action did Lorenz Schneider take against them?

A. None.

Q. None whatsoever? A. None whatsoever.

Q. What happened after they refused to take it out? A. We had a lot complaints from the stores, and I know that some fellows were forced by the managers of the stores to go back and get the merchandise, and take it out and put it in the store, with the threat that if they didn't, why, they weren't going to let them put anything else in.

Q. That's the store managers? A. That's right.

Q. They are not employees of Lorenz Schneider? A. No.

Q. By the way, about how many promotions a year do you [441] have, of those the manufacturers run? A. I would say at least six.

Hearing Officer: Is that, just for clarity, is that each manufacturer runs six?

You deal with three or four major lines?

The Witness: Each manufacturer—I would say approximately.

Q. Now, is there something called a sales contest, as well as a sales promotion? A. From time to time, we do have sales contests.

Q. Tell us what they are? A. They work in various ways. The manufacturer will decide that he would like to get more of his products on the market, and say that he would give



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so much money or allot so much money toward a contest, and there's various ways of doing it.

They will set up maybe a quota against a—a percentage against a man's purchases.

Q. Who is they? A. The company. They will ask the company to set up—manufacturer will ask the company to submit to them the purchases of, number of weeks or months prior to this, and then request that, for so much over the percentage, that they go, or dollarwise, whatever it might be, that they award either money, prices or—

\* \* \* \* \*

[451] Hearing Officer: I don't know why you feel you have to respond, Mr. Dicker.

What is your objection, Mr. Rosenberg? Are you saying he should not have the right to put this on the record?

Mr. Rosenberg: He is showing a breach of contract because the contract says otherwise. But I withdraw my objection.

Hearing Officer: Why are you reading from that first?

Mr. Rosenberg: Why I made my objection in the first place?

Hearing Officer: The record indicates that.

Continue, Mr. Dicker, unless Mr. Rosenberg has anything else to say.

Q. (By Mr. Dicker) Mr. Price, have distributors sold their routes to other than Lorenz Schneider? A. Yes.

*Kenneth Price—for Employer—Direct*

Q. Has that happened more than once? A. Yes.

Q. Has Lorenz Schneider ever refused to allow the sale by a distributor to someone other than Lorenz Schneider?

A. No.

Q. Never refused? A. No.

[452] Q. When—in those instances where routes were sold to individuals other than Lorenz Schneider, were they sold at the rates, and the ratio set for the sale in the contract? A. In other than Lorenz Schneider?

Q. Yes. A. They have been sold for more.

Q. They have been sold what? A. They have been sold for more.

Q. For more? A. Yes.

Q. You mean for a different price base than that set forth in the contract? A. That's right.

\* \* \* \* \*

[453]

Hearing Officer: Accounts, as opposed to entire routes. Have individual accounts been sold by distributors, [454] to other than Lorenz Schneider, at a ratio other than the ratio in the contract in effect between the distributor who is selling the route and Lorenz Schneider?

Do you understand the question?

The Witness: Not to my knowledge. I understand the question.

Hearing Officer: Any objection?

Mr. Rosenberg: I didn't object to your question; I just thought it wasn't clear because of the different contract.

*Kenneth Price—for Employer—Direct*

Hearing Officer: I agree. I was unaware of the difference, and my question was unclear, if that's the case.

Proceed, Mr. Dicker.

Q. (By Mr. Dicker) Mr. Price, you were employed with Lorenz Schneider in 1967, were you not? A. Yes, sir.

Q. Did you participate in the collective bargaining negotiations between Lorenz Schneider and Local 802? IBT? A. Yes.

Q. At the time the negotiations began in 1967, did Lorenz Schneider have any relationship with anyone known as a distributor relationship? A. No.

Q. Who operated the vehicles that delivered the produce [455] that Lorenz Schneider distributed, to the retail outlets? A. Route salesmen employees.

Q. Were those route salesmen represented by any labor organization? A. Local 802.

Mr. Rosenberg: I would object to that as having no bearing whatsoever on the issues here. Let's assume, and this is merely an assumption, not an accusation, Mr. Kendellen, I want to make this clear before I say it, but let's assume that the union official and the company official entered into a nefarious contract, for the detriment of the employees, by permitting the company to make contractual arrangements which on its face appears to be that of an independent relationship, and releases the company from the obligations of the contract.

Let's assume this without accusing. Even assuming that this were not the case, let's assume then an-

*Kenneth Price—for Employer—Direct*

other set of facts, that the union is under the impression that this type of a relationship is wanted by the men and is, in fact, a relationship other than employer and employee.

Or for any other reason whatsoever, whether it be dishonest, dishonorable, stupid, or erroneous, the union says, we are no longer willing to, able to, or want to, or will continue to represent these men.

\* \* \* \* \*

[462] Mr. Rose: If it does, then it should consider my wife's opinion.

Hearing Officer: Well, of course, I am not in a position to and I am not going to make any determinations as to the weight to be given to the matters that Mr. Dicker is going to raise and to which Mr. Rosenberg objects.

The test is more appropriately whether it be—it could be relevant to the Board's determination.

Within that broad test, merely whether it could be relevant, the subject matter, because it provides a background in which the parent distributors established their relationship with the employer, may be highly relevant, in this proceeding.

Since the test is merely whether it could be relevant, I think the material involved here should be admitted. If that is the extent of your objection, Mr. Rosenberg, the objection is overruled, and Mr. Dicker is—if he is ready, he can continue with this line of questioning.

Q. (By Mr. Dicker) I think you already indicated that you participated in the negotiations in 1967, between Local 802 and Lorenz Schneider? A. Yes.



*Kenneth Price—for Employer—Direct*

Q. And that at that time, route salesmen who were [463] represented by Local 802, operated the trucks between Lorenz Schneider warehouse and the retail outlet?  
A. Yes.

Q. Was there any discussion during the 1967 negotiations concerning the sale of routes? A. Yes.

Q. Can you tell us what the initial position of the parties was during those negotiations?

Mr. Rosenberg: Again, I object. I would like the record to indicate that I have a continuing objection in regard to any testimony as to what the positions or the opinion of anybody was at the time these people became employed by the company, under the present existing contracts and type of operations, as not having the slightest probative value in determining their status.

Mr. Dicker: I will withdraw the question as to the position of the parties.

Q. Did you eventually negotiate an agreement with Local 802? A. Yes.

Q. Was any economic pressure applied by Local 802, prior to the negotiations of that agreement?

Mr. Rosenberg: I object to that.

A. Yes.

Hearing Officer: Just a moment, Mr. Price, if [464] there is an objection, please don't answer the question until it's completed.

*Kenneth Price—for Employer—Direct*

The Witness: I am sorry.

Hearing Officer: You object to it, Mr. Rosenberg?

Mr. Rosenberg: That's right. It calls for a conclusion of this witness, as to what constitutes pressure and what kind of pressure it is.

Is it a pressure for money?

Mr. Dicker: I didn't ask him what kind of pressure. You objected to the question asking what the position of the parties was. I withdrew that.

I am asking whether there was a strike or—

Mr. Rosenberg: You didn't ask that.

Q. Was there a strike which occurred prior to the signing of the contract between Local 802 and Lorenz Schneider in 1968? A. Yes.

Q. Who participated in that strike? A. Some of the employees.

Q. This strike which occurred immediately prior to—how long was the strike? A. Three weeks.

Q. Did the drivers engage in that strike? A. Yes.

Q. After the conclusion of the strike, and an agreement [465] was signed between 802 and Lorenz Schneider? A. Yes.

Mr. Dicker: Would you mark this document Exhibit 17 for identification?

Mr. Rosenberg: I can't read it. This is an illegible copy.

Mr. Dicker: They all are.

Mr. Rosenberg: If they all are, I object to it on that ground, if no other. You say the others are as bad as this?

*Kenneth Price—for Employer—Direct*

Hearing Officer: May I see it?

Mr. Dicker: I have retyped Article 18 which refers specifically to the sale of routes. I had it retyped. Our secretaries were able to read it. I agree with you it is difficult to read, but nevertheless, it is readable.

Mr. Rosenberg: I can't read it, and I object to it on that ground. I don't know if Article 18 is the only one that is important, assuming it is admissible.

There may be other paragraphs that may qualify it, I can't read it.

Surely there must be one legible copy that you can produce? The original document?

Mr. Dicker: We can't find the original document.

Mr. Rosenberg: Go to Local 802, you still do [466] business with them.

. . . . .  
 . . . . .

[471]

Hearing Officer: To avoid confusion, Mr. Dicker, [472] as Mr. Rosenberg has stated, I consider 17A legible enough to—

Mr. Dicker: Fine with me. I will withdraw 17B, and renew my offer to 17A.

Hearing Officer: And rather than have confusion which is greater than the convenience, though we appreciate your effort.

Your objection as to the relevance—

Mr. Dicker: Could this be 17 rather than 17A?

Hearing Officer: That's correct.

That will be 17.

*Kenneth Price—for Employer—Direct*

Your objection to relevance, Mr. Rosenberg, is similar to the objection that I have already overruled.

This is received as Employer's Exhibit 17. Employer's 17B has been withdrawn, and for clarity on the record, this is the only—the "A" has been removed from 17A and is now Employer's 17.

(Employer's Exhibit 17, previously marked 17A, was received in evidence.)

(Document previously marked Employer's Exhibit 17B was withdrawn from the hearing.)

Q. (By Mr. Dicker) After the signing of the—of Employer's Exhibit 17, did, in fact, Lorenz Schneider sell routes to any of the then route salesmen? A. Yes.

[473] Q. After the route was sole to a route salesman, did Local 802 claim it represented the individual as a distributor? A. No.

Mr. Rosenberg: The same objection. I presume the same ruling?

Hearing Officer: Just a moment, Mr. Dicker.

Mr. Rosenberg: Same objection, which I presume would call for the same ruling. I just put it on the record without wishing to interrupt the continued line of questioning.

Hearing Officer: Same ruling.

Q. (By Mr. Dicker) Within a few months after the execution of Employer's Exhibit 17, was there another strike by Local 802 against Lorenz Schneider? A. Yes.



*Kenneth Price—for Employer—Direct*

Q. Who participated in that strike? A. The employees.

Q. Warehousemen? A. Route salesmen.

Q. Route salesmen and warehousemen? A. Yes.

Q. Both? A. Yes.

Q. What about those individuals who had purchased their [474] routes and were then called distributors, did they participate in that work stoppage? A. No, they didn't.

Q. They continued to work through that period of time? A. They did.

Q. Do you have a contractual relationship with Local 802 today? A. With the warehouse employees.

Q. Do you have a contractual relationship with Local 802 today? A. Yes.

Q. For which employees? A. The warehouse employees.

Q. Let's go back to 1967 for a minute.

You didn't sell all the routes immediately after the signing of that contract in '67, did you? A. No.

Q. Those individuals who remained as route salesman during the period you were selling routes, were they represented by Local 802? A. Yes.

Mr. Rosenberg: How is that, again?

Mr. Dicker: Those individuals who remained route salesmen during the period of the selling of the routes, continued to be represented by Local 802.

Q. Is that right? [475] A. Yes.

Q. Did there come a time when all of the routes were sold? A. Yes.

Q. When was that, approximately? A. I would say around September or October in 1967.

*Kenneth Price—for Employer—Cross*

Q. Did Local 802 continue to represent any drivers after that time? A. No.

Mr. Rosenberg: By drivers, does he mean the present distributors?

Mr. Dicker: Route salesmen.

Q. Route salesmen? A. No.

Q. Did Local 802 claim representation for the distributors, the individuals to whom the routes were sold? A. No.

Mr. Rosenberg: That's an important question.

Hearing Officer: Let's take a very brief recess.

(Short recess taken.)

Hearing Officer: Back on the record.

Mr. Dicker?

Mr. Dicker: Mr. Kendellen, we have additional evidence to present in the form of Mr. Tomasik, with respect to the accounting system, with respect to how the [476] rebates work, and with respect to how the compensation in accordance with the contract operates.

[485]

\* \* \* \* \*

*Cross Examination:*

Q. But in any event, these five DR men have assigned to them approximately 10 to each, making a total of about 50 men, is that correct? A. Well, it couldn't be correct—

Q. Well, approximately. There are 53 men? A. Yes.

Q. All of the 53 men are assigned to one or another of these DR men, right? A. Yes, they are all assigned.

*Kenneth Price—for Employer—Cross*

Q. And there would be approximately 10 to each, although we know there would have to be an odd amount somewhere to make up the 53? A. Right.

Q. The point is, there are no distributors to whom no DR men have been assigned by the Company, isn't that correct? A. That is correct.

[486] Q. Now, sir, would you please tell us do you know of your own knowledge the names of any of the distributors assigned to any of these DR men? A. No, I don't.

Q. Are they assigned by an area or territory, and the men—the distributors in that territory are automatically assigned to the DR men? A. Not necessarily so.

Q. Do you know, for example, any distributors assigned to any one of these DR men?

Mr. Dicker: I object to this, I don't understand the relevance of what the names is.

Q. (By Mr. Rosenberg) Do you know, would you give me the name of one distributor assigned to one DR man?

Mr. Dicker: What is the relevance?

Hearing Officer: The objection is relevance, why one?

Mr. Rosenberg: I want to use that as an example. For example, does Mr. Sonkin have a Mr. X as a distributor assigned to him; I want to know if he knows that.

Mr. Dicker: What is the relevance?

Mr. Rosenberg: You will find out later. This is cross-examination, I am going to build up a record

*Kenneth Price—for Employer—Cross*

here. I will show you what the relevance is in a few moments, and you should listen to it and see.

[487] Mr. Dicker: The name of what route man is assigned to what DR man, I don't think is relevant.

Mr. Rosenberg: That is right.

Mr. Dicker: The testimony is that each DR man has assigned to him approximately 10 route men.

Mr. Rosenberg: I know.

Right now I want to know each distributor that is assigned to a DR man.

Mr. Dicker: What is the relevance?

Hearing Officer: I think Mr. Rosenberg's point is that he would like to take one specific example, and then to the extent of Mr. Price's knowledge, question Mr. Price as to the relationship between these two individuals.

Mr. Rosenberg: Right. That is what I am going to do.

I tell you what I am going to do, I am going to withdraw the question and ask it this way:

Q. (By Mr. Rosenberg) Do you know a Mr. Katz, a distributor named Mr. Katz? A. Yes.

Q. Is he assigned as one of the distributors to a particular DR man? A. He would be of necessity.

Q. Do you know whether or not Mr. Sonkin is his DR man? A. No.

[488] Q. Now, sir, how are these DR men paid by the company? A. They are paid a salary and they have a bonus system.

Q. Would you explain, please, what the bonus system is and how the bonus is arrived at. A. I can't explain it in



*Kenneth Price—for Employer—Cross*

detail, I know there are several points that the bonus is derived from.

Q. Let's start this way, do the sales, the number of sales, the amount of sales made by a distributor assigned to the DR man affect the bonus the Company pays the DR man?

A. I believe that that is one of the points in the system.

Q. Isn't it correct to say that the more the distributor sells, the more or larger is the bonus that the DR man receives from the Company? A. I would say yes.

Q. Isn't it the duty of the DR man to check the sales of each distributor assigned to him and compare it with other periods as to volume? A. They do that.

Q. Isn't it the duty of the DR man, when he sees that the sales of a particular distributor has been falling down, to talk to the distributor about it? A. Yes.

Q. Isn't it the duty of the DR man to try to show the distributor what he should do to increase sales? [489] A. It is his duty to try to be helpful to him—

Q. Mr. Price, answer the question.

Mr. Dicker: Let him finish the answer first.

Q. Would you give us the answer again. A. To give him advice, to try to help him, to increase his sales.

Q. Isn't it a fact that the distributor informs—I am sorry, I withdraw that.

Isn't it a fact that the DR man informs the distributors what displays he is to put into a customer's premises in order to increase sales? A. To inform him?

Q. Yes. A. Yes.

*Kenneth Price—for Employer—Cross*

Q. And doesn't the DR man go out to the customers of the distributors to check on the displays and whether they are placed properly to bring about the best possible sales of the merchandise? A. From time to time they are checked.

Q. Now, who pays the DR man, the Company or the distributor? A. The Lorenz Schneider Company.

Q. If a distributor's sales continue to fall, does the Company's DR man—the DR man, have any talks with the distributor as to his method of putting out the merchandise [490] to help in the sales? A. Yes.

Q. And if the distributor does not improve in sales, isn't it the duty of the DR man to make a report to Mr. Zuba; isn't that the case? A. Yes.

Q. What? A. Yes.

Q. And doesn't he make a report in writing criticizing the work of the distributor in such report to Mr. Zuba? A. I wouldn't necessarily say criticizing. He would make a report of the facts that he has seen on the route.

Q. Now, sir, following such a report of the facts that the DR man is seeing on the route of the distributor, isn't it the job of the DR man or the supervisor, Mr. Zuba, to call in the distributor to discuss this report? A. Yes, sir.

Q. Now, sir, from time to time have any of the distributors had any stops, customers, exchanged by the Company at the Company's insistence because of poor service? A. Not to my knowledge.

Q. It has never happened? A. Not to my knowledge.

Q. You never heard of it happening? A. No, sir.

[491] Q. Has the Company threatened any of the distributors that if they do not improve their service to their

*Kenneth Price—for Employer—Cross*

stops, or a stop they bought from the Company, it would become an open account? A. Not to my knowledge.

Q. Haven't letters been written by the Company to any of the distributors telling them that unless their work improves the stop will become an open account; write letters, sir? A. That unless the service improves to the account, that it would become an open stop?

Q. That is right. A. Not to my knowledge.

Q. Have any letters been written, to your knowledge, to any distributors in which the Company stated that any stop heretofore—theretofore sold to the distributor could or would become an open account?

Mr. Dicker: He has answered that question twice, Mr. Examiner.

Mr. Rosenberg: I want him to answer once more before I show him a letter.

Hearing Officer: Your question is an identical one to the first question, do you agree?

Mr. Rosenberg: It is not identical. I think if you read it back you will see it is not identical.

[492] Hearing Officer: Mr. Reporter?

(The pertinent portion of the record was read by the Reporter.)

Mr. Rosenberg: Could or would, making reference to making it an open account for any reason.

Hearing Officer: Go ahead, answer the question.

The Witness: You are saying "for any reason"?

Q. (By Mr. Rosenberg) I am saying, for any reason did they write any such letters? A. That is possible.

Q. That is possible? A. Yes.

*Kenneth Price—for Employer—Cross*

Q. Haven't you seen such letters? In fact—I withdraw that.

Haven't you seen such letters? A. It is possible.

Q. It is possible or did you do it? A. Again, I say it is possible. If you have the letter, I certainly did.

I don't remember every letter that I—I don't always remember every letter that I ever sent.

Q. Well, did you ever tell any distributor, not write him a letter but tell him the same thing; namely that a stop which has been sold to him would for any reason become an open account? [493] A. Only if he were thrown out of the stop.

Q. Would you explain that, please to us; what do you mean, "if he were thrown out of the stop"? A. That if he had done something in the store and the manager was unhappy about it or dissatisfied, didn't like his service and were to lose that stop because of that, then it would become an open stop after 30 days.

Q. You mean if the customer was dissatisfied, the customer of the store was dissatisfied with the distributor's service— A. In other words, if the customer—

Mr. Dicker: What was that?

Mr. Rosenberg: I have not finished the question.

Hearing Officer: Mr. Price, let him finish the question.

Mr. Rosenberg: Let me start again.

Q. (By Mr. Rosenberg) In other words, would it be correct to say that if a storekeeper was unhappy with the service he was getting from a distributor, for whatever reason in the world, good, bad or indifferent, and told the distributor, "I don't want to buy any merchandise from



*Kenneth Price—for Employer—Cross*

you, and this lasted for 30 days, the Company, your Company, would do what in regard to this stop or customer?

A. I would say, first of all, it wouldn't be just for any reason, but if there was a problem there between the storekeeper and the distributor--

[494] Q. That would be for any reason, that would be one of a million reasons, right? A. Well, all right, we'll say one of a million reasons.

Q. So I said for any reason, which would include any reason that you can think of? A. All right.

Q. What would the company do? A. First of all, they would either—the operation manager or DR man would go over and talk with the storekeeper and try to reconcile whatever the trouble was, whatever the problem was, and try to reconcile whatever the problem was, to try to bring understanding, to try to have the distributor hold the account.

This has been done in many, many occasions. There have been times—

Q. Please, I didn't ask you about that.

Hearing Officer: Just a moment, Mr. Rosenberg. I think that Price is preceeding with what he feels is the full answer to your question, I think he should be able to continue.

Q. (By Mr. Rosenberg) Go ahead. A. There have been times where they have not been able to bring about a reconciliation, and it certainly was not the fault of the distributor, where they were going to lose the account, and we have

*Kenneth Price—for Employer—Cross*

worked out something where they [495] have been able to change the account with one of the other distributors who would be able to give him an account of like value.

If it was not the fault of the distributor, if it was not his fault, he would not lose the account. And if he lost the account and it was not his fault, he would be given a route of equal value.

If he lost the route and it was his fault that he lost the account, it would then become an open account.

Q. Now, when it became an open account, what does the Company do with that account, does it assign it to another distributor or service it itself? A. There have been various things that have been done. There have been times when even if it were the fault of the man, the distributor, that he has been given another account for it and they give his account to a different distributor.

There have been times when it has just laid and somebody else has walked in and taken the account.

Q. Now, who decides whether the distributor was right or wrong in the dispute with the Company? A. I would say the operation manager and general sales manager.

Q. The Company, right? A. Right.

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[500] Mr. Rosenberg: My questions are strictly directly to these negotiations on price that we are talking about. That is what I am talking about, I don't mean who deals with them about the price of vegetables that they sell in the place, what your company has nothing to do with, and I don't care.

If I were to ask that question, it would be ridiculous.

*Kenneth Price—for Employer—Cross*

Hearing Officer: All right, are we clear?

Mr. Dicker: I don't think so.

Hearing Officer: Are we clear?

Mr. Dicker: I don't think the witness understands where we are going.

Hearing Officer: I think I know what is going on—

Mr. Rosenberg: Let me withdraw the question.

Q. (By Mr. Rosenberg) You told me the names of the people on behalf of Lorenz Schneider that negotiated the price for merchandise at a promotion with Waldbaum's chain of stores, remember that?

Just two minutes ago, do you remember giving me the names of those people? A. Excuse me, I don't remember.

Q. Answer yes or no.

Hearing Officer: Just a minute, Mr. Rosenberg, let him answer the question, please.

A. I don't remember you saying they negotiated the price, [501] because when they go with a promotion, they have the price with the Wise people or whatever the company is.

Q. You don't like the word "negotiate"; goes there and presents a price.

Mr. Dicker: Well, there is a difference between presentation and talk.

A. He presents a price, he does not negotiate. He goes there and presents it to them.

Q. To whom does he present this price? A. To the buyer.

*Kenneth Price—for Employer—Cross*

Q. What is the name of the person in Walbaum to whom this price is given by the gentlemen whose name you have mentioned; gentlemen, plur? A. I don't know the names of the buyers.

Q. Now, sir, these names that you have just given us, Joseph Morreale, Ed Zuba and Frank Blumberg are employees of Lorenz Schneider, there is no question about that, is there? A. No, no question.

Q. And they act under your instructions as general manager of the business, isn't that so? A. Not directly under my instructions. They act under the instructions of the general sales manager.

Q. Who is under you? A. Who is under me.

[502] Q. Correct? A. That is right.

Q. And he acts under your instructions? A. Not necessarily. Not necessarily so. He is under me, but not necessarily acting under my instructions.

He runs his own department.

Q. Doesn't he have to account to you? A. We talk together, yes.

Q. When he does a bad job, you would be able to reprimand him, wouldn't you? A. I would.

Q. Even discharge him? A. I don't know about that.

Q. You could recommend his discharge to Mr. Brown, couldn't you? A. I could recommend it, yes.

Q. Now, sir, whatever price—I withdraw that.

Does the Walbaum chain stores deal directly with the distributors on the price? A. No.

Q. Do the distributors have any voice in the price? A. No.

Q. Now, sir, how are the distributors informed of this price? A. Either of two ways or possibly both ways, that



*Kenneth Price—for Employer—Cross*

is by [503] bulletins or by their DRs or operation managers.

Q. What do you mean by bulletin, they are sent a notice to their homes? A. No, into the bin. Every man there has a bin.

Q. Where are those bins? A. In the sales room.

Q. In the sales room, right? A. Right.

Q. And what bulletin are you referring to, what does a bulletin consist of? A. Information consisting the promotion, whatever the promotion might be.

Q. Does it contain the information as to the price the store chain is going to pay for the merchandise? A. Yes.

Q. Is that the first or around the first time that the distributor is told the exact price; isn't that so? A. Yes.

Q. Now, sir, does the Company at that time, in the same bulletin or through the DR men, tell the distributor how much he is to receive—I withdraw that—how much the distributor is to pay for that merchandise to the Company? A. I believe so.

Q. Now, sir, does the Company also agree with the chain, a chain like Walbaum's, in regard to a matter called rebates? [504] A. The rebates—

Q. Listen to the question, sir.

Mr. Dicker: Let him answer the question.

Mr. Rosenberg: I am not asking him generally about rebates, I am asking him specifically.

Hearing Officer: Let Mr. Price answer the question, if we require any adjustment in the record because it is not responsive, we will do that.

Please let him answer the question.

*Kenneth Price—for Employer—Cross*

A. The rebate has been settled between the chains and the manufacturers and has been so for a number of years.

Q. Let me understand that, sir.

When you say "manufacturer," who do you refer to, who do you mean? A. The manufacturer of whatever product we are putting in, Wise Potato Chips, the Wise Potato Chip Company.

Q. You mean, is it your contention that the Wise Potato Chip Company has dealt directly with the Walbaum buyers and fixed the price with them? A. In the past they have.

Q. I ask you now, in the present, in the last four years, since 1967, I don't care what happened before 1967, but from 1967 on is it your contention that the Wise Potato Chip Company, not Lorenz Schneider, agreed with the chain, Walbaum chain, as to the price they are to pay for the [505] merchandise? A. Yes.

Q. Direct dealing, correct? A. Yes.

Q. Who in the Wise Potato Chip Company dealt directly with Walbaum's to your knowledge? A. A gentleman by the name of Frank Crotzer, C-r-o-t-z-e-r.

Q. Spell that again, please. A. C-r-o-t-z-e-r.

Hearing Officer: Mr. Rosenberg, before we go any further I want to make sure there is no confusion, we were talking about prices during the promotion—

Mr. Rosenberg: I will get to other things later.

Hearing Officer: I am sorry, just a second. Then you mentioned rebates and now you are back to prices.

Mr. Rosenberg: Rebates and promotions and sales. They are all tied together.

*Kenneth Price—for Employer—Cross*

If you will be a little patient, they will be tied together.

Hearing Officer: I just want to be sure it is clear on the record.

You talked about prices and then rebates.

Mr. Rosenberg: I asked him if he knew anything about rebates, and it will be developed so clearly that anyone who reads the record will know what a rebate is, you will [506] have so much testimony on it.

Q. (By Mr. Rosenberg) Now, sir, how does Lorenz Schneider know the price that was agreed upon between the Wise Potato Chip Company and the Walbaum chain?

A. They are notified in writing.

Q. By whom? A. By the Wise Company.

Q. Now, sir, what is the connection of Lorenz Schneider Company with the Wise Potato Chip Company, the manufacturer, as you called it? A. The Lorenz Schneider Company is known as the key dealer in the metropolitan New York dealer of Wise Potato Chip.

Q. Will you explain the meaning of the words "key dealer"?

Incidentally, is that spelled k-e-y? A. Yes.

Q. Will you explain what is meant by a "key" dealer?

A. He is the man who has the complete franchise of all the sales of Wise products in the metropolitan area.

Q. Did you ever hear of a company called Yorkshire?

A. Yes, sir.

Q. Is that company owned by the same management as Lorenz Schneider? A. Whether it is owned by the same management or not, I [507] don't know. I know it is the same president.

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*Kenneth Price—for Employer—Cross*

[594]

\* \* \* \* \*

Do you know of any DR men sent to the routes of the distributors in the last—since 1967, without the request of such distributor, sir?

Do you understand the question? A. To ride on the route with the distributor?

Q. No, to visit the customer on the route. A. I know that happens frequently.

Q. The company does send out DR men to visit the customers of distributors, correct? A. Yes.

Q. That is without asking the distributors, isn't that so? A. Yes, sir.

\* \* \* \* \*

[600]

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Mr. Rosenberg: Let me have that again, please.

Mr. Dicker: Here (handing).

*By Mr. Rosenberg:*

Q. Is Exhibit 3, Employer's Exhibit 3, the only application form (handing)? A. For a man who is coming in specifically to purchase a route, yes.

Q. How about a man who comes in in answer to an ad that you run in the newspaper under "Business Opportunities," what application form is he given to fill out? A. So far as I know, this one (indicating).

Q. And none other? A. Not that I know of.

Q. I see.

You know of no other? A. No.

Q. Now, I call your attention to your testimony that you gave on direct examination in regard to shelving.

Do you recall your telling about shelving? A. Yes.

Q. Now, would you tell us exactly what it is that the company does about shelving involving distributor stops? A.



*Kenneth Price—for Employer—Cross*

You're talking now of new accounts or just what are you talking about?

[601] Q. Any account, new or old or indifferent.

Mr. Rosenberg: I don't know what an indifferent account is. I'll withdraw that last one.

*By Mr. Rosenberg:*

Q. New or old, any account. A. We have a new account man, who, when a new store opens up, he places the shelving, he opens up the account, that is, with new chains, he opens it up and puts in whatever is required there at the time.

Q. Now, who pays for that shelving? A. The men pay for the shelving.

Q. Well, who bills the men for the shelving? A. The company.

Q. Who determines how much shelving goes into the account? A. Who determines it?

Q. Yes. A. The man in the chain store, generally the supervisor, or the man in charge of setups.

Q. So that do I understand correctly that somebody on behalf of the Lorenz Schneider Company with someone on behalf of the chain store, determine how much shelving and what kind of shelving goes into the store?

Mr. Dicker: I'm sorry; could you read that question back?

[602] I think there may be too many alternatives in it.

*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: Do you object to the question or do you just want to hear it?

Mr. Dicker: I want to hear it first.

(Record read.)

Mr. Dicker: I have no objection.

A. Yes.

Q. Who determines the price of the shelving to be charged to the distributor, the amount of money to be charged to the distributor? A. The amount of money charged to the distributor?

Q. Yes. A. That's the cost price—

Q. Just a moment.

I didn't ask you how it's arrived at, I said, who determines the price, who makes the price? A. Lorenz Schneider.

Q. Lorenz Schneider; all right.

Now, after an account is opened, does the company require the distributor to place any additional or different shelving or display equipment in the store? A. If the chain store asks for it.

Q. If the chain store does ask for it and speaks to Lorenz Schneider Company, what is the procedure of the company at that time?

\* \* \* \* \*

[605]

Q. Isn't it a fact that the company will not accept the submission of the balance sheet from the distributor unless the rebates are correctly computed on the basis of 5 per cent with sales over \$200, etc.? A. Are you talking in the case of chains or independents?

*Kenneth Price—for Employer—Cross*

Q. Let's talk of chains first and then we'll come to independents. A. All right.

The chains make an automatic deduction themselves.

Q. Why? A. Because they receive these men's billings.

Q. Do they receive the bills from the men or do they receive the bills from your company, sir? A. Well, they receive the bills from the company.

The men handed the bills in, and the company forwards them on to the manufacturer.

Q. To the manufacturer or to the chain store?

To whom does it send the bill to? A. To the manufacturer—the chain stores get a copy from the men, and then the manufacturers send the copy to the—rather, the company sends a copy to the manufacturer.

[006] Q. Let me see if I understand you. A. As a matter of fact, I believe they send two copies to the manufacturer, and one is forwarded to—

Q. Let me see if I understand it.

Mr. Dicker: Just let him finish the answer.

A. And one is forwarded to the chain.

Q. Let's take a specific example.

Daitech Dairies. You've heard of that outfit? A. Yes.

Q. Would you consider them one of the chains you're talking about? A. Sure.

Q. Let's take distributor Mr. "X" who brings merchandise into a Daitech store, say, on Roslyn Road, Roslyn Heights.

Do you know that store? A. I know the store.

Q. You know the store; okay.

*Kenneth Price—for Employer—Cross*

Now, he brings in a load of merchandise.

Does he get a receipt for the merchandise from the store person or person designated by the store manager? A. Sure.

Q. What does he do with that receipt, the distributor, in connection with collecting for the merchandise? A. He hands the receipt in to the cashier.

Q. Cashier where? What company's cashier? [607] A. Lorenz Schneider.

Q. Lorenz Schneider's cashier; correct? A. Correct.

Q. Now, what does the cashier at Lorenz Schneider do with this receipt for merchandise brought to him or her by the distributor? A. Passes it in to the general office, who, in turn, mails it to the manufacturer.

Q. What do you mean? Mails it to whom? A. The manufacturer of the product.

Q. Well, let's assume it's a Wise Potato Chip, bags of Wise Potato Chips.

You've heard of that product? A. Yes.

Q. I figured you would.

What does the bookkeeper do with the receipt that the distributor brought to her or him or it?

Mr. Rosenberg: Today, you know, everything goes.

Mr. Dicker: Not in Lorenz Schneider.

A. What does the cashier do with it?

Q. Right. A. Passes it on to the general office.

Q. All right.

What does the general office do with it? A. They're all tallied and sent to the manufacturer.

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*Kenneth Price—for Employer—Cross*

[608] Q. Please, we gave you a specific product.

What does the— A. Wise Potato Chips.

Q. To the Wise Potato Chips Company? A. Right.

Q. I see.

What does the Wise Potato Chip Company do with this piece of paper?

Do you know? A. Well, about as much as I could say, they process it and charge the store.

Q. Who fixes the price charged to the store? A. The Wise Potato Chip Company.

Q. The Wise Potato Chip Company? A. Yes.

Q. What does Lorenz Schneider have to say about that?  
A. About what?

Q. About that price.

Anything? A. As far as I know, nothing.

Q. Nothing? A. As far as I know.

Q. What does the distributor have to say about that price? A. I don't know. Nobody said anything yet.

[609] Q. Less than nothing; isn't that so?

Mr. Dicker: Objection.

Hearing Officer: Sustained.

*By Mr. Rosenberg:*

Q. Does the distributor have anything to say in fixing the price with the chain store? A. I would say no.

Q. No? A. I would say so.

Q. I see.

Now, sir, eventually the chain store receives a bill from somebody for that merchandise; is that correct?

*Kenneth Price—for Employer—Cross*

Mr. Dicker: Objection.

The witness testified as to whom the bill is received from.

Mr. Rosenberg: I'm talking now of the chain store. They eventually receive a bill from somebody; that doesn't preclude anybody.

Mr. Dicker: I'm going to object to the question.

The witness has testified that the bill comes from the manufacturer.

Hearing Officer: That's in the record.

Mr. Rosenberg: Yes, but that's not the gist of my question.

They do receive a bill from somebody, which could [610] be the manufacturer or anybody else.

Hearing Officer: The record is already clear on that.

Mr. Rosenberg: I want to know if they do receive a bill.

We have already found out from whom from this witness, at least that's what his testimony is.

Hearing Officer: Right.

I don't want to obscure the record in any way by now talking as though we don't know who the bill is from.

Mr. Rosenberg: We're stipulating that this witness says that the manufacturer, the Wise Potato Chip Company, has billed the store for the merchandise.

All right?

Hearing Officer: All right.

*Kenneth Price—for Employer—Cross*

*By Mr. Rosenberg:*

Q. Now, when they receive the bill, does that bill contain an amount of money for the merchandise? A. Yes.

Q. Does that bill get paid?

Do they pay the bill?

Does the Daitech store pay the bill? A. Sure they pay the bill.

Q. To whom? A. They pay it to Wise.

[611] Q. They pay it to Wise Potato Chip Company, not to Lorenz Schneider? A. No.

Q. Is that correct? A. That's correct.

Q. I see.

Now, sir, where did Lorenz Schneider get the merchandise in the first place? A. From Wise Potato Chip Company.

Q. Does Wise Potato Chip Company bill Lorenz Schneider for the merchandise? A. Certainly.

Q. Does Lorenz Schneider pay the Wise Potato Chip Company for this merchandise? A. Yes.

Q. How do they pay it, sir? A. How?

Q. What method do they use of payment? A. I would suppose by check.

Q. Now, if I understand correctly—let me follow the procedure again. A. All right.

Q. The distributor goes into the store—and stop me if I incorrectly state what you testified to, sir— A. All right.

[612] Q. —the distributor goes into the store and leaves an order of merchandise.

Is that correct? A. Yes.

Q. He then takes a bill, or receipt form out and has it signed by somebody in the store.

He then takes the receipt to the Lorenz Schneider book-keeper and hands it over.

*Kenneth Price—for Employer—Cross*

The receipt then goes to some billing office or some book-keeping office in Lorenz Schneider and is then forwarded to the Wise Potato Chip Company.

The Wise Potato Chip Company then bills the chain for the merchandise.

The chain then pays the Wise Potato Chip Company for the merchandise.

The Wise Potato Chip Company then bills Lorenz Schneider for the same merchandise and Lorenz Schneider sends a check to the Wise Potato Chip Company for this same merchandise.

Did I correctly state your testimony, sir? A. I—

Q. Take your time. A. When the Wise Potato Chip Company—

Q. Would you want to hear the statement repeated?

Mr. Dicker: Let him answer it.

[613] Hearing Officer: I think if he's allowed to give the full answer, it will be—

*By Mr. Rosenberg:*

Q. Are you prepared to answer it or do you want it repeated? A. I can answer it.

Q. All right. A. When the Wise Potato Chip Company sends in their bill, they send less 5 percent.

Q. To whom? A. To the chain stores.

We also receive, in time, the five percent taken from the bills.

Q. Are you finished? A. That we have submitted to them, that is.

Q. Are you through? A. Yes.



*Kenneth Price—for Employer—Cross*

Q. Then if I understand correctly, aside from the matter of a 5 percent discount, or rebate, the statement that I gave you as your testimony is correct; is that so? A. I would say so.

Q. Now, isn't it a fact that no money, in accordance with your description of what happens, Mr. Vice President and General Manager—no money is received by Lorenz Schneider but Lorenz Schneider, in turn, pays for merchandise [614] it didn't even bill out or collect for?

Mr. Dicker: Objection.

That wasn't his testimony.

Mr. Rosenberg: I'll let you judge that by listening to the recitation of what happened.

Mr. Dicker: Mr. Hearing Officer, the transaction between the—

Mr. Rosenberg: I don't want to explain to him his mistake. I would suggest that the argument be not stated in his presence.

Hearing Officer: Just a moment, please, gentlemen.

My understanding of Mr. Price's testimony so far is that he has stated that Lorenz Schneider sends a check to Wise.

Mr. Rosenberg: Yes.

Hearing Officer: The—

Mr. Rosenberg: And that Wise bills the chain store and collects for it, so Wise is collecting twice—

Hearing Officer: Right.

Mr. Rosenberg: —and Lorenz Schneider collected zero and just pays out, which obviously is in error.

*Kenneth Price—for Employer—Cross*

Mr. Dicker: I object to that.

Mr. Rosenberg did not ask for the entire transaction. It is an aspect of the transaction which Mr. Price explained on direct testimony concerning the sale of merchandise to the independent contractors, which Mr. Rosenberg

\* \* \* \* \*

[630]

Q. Now, sir, does the company—that's Lorenz Schneider Company—ever pay the distributor anything for this work of distributing and bringing this box of 5.85 merchandise into the store? A. He makes his profit on the sale at the time that he sells it.

Q. How does he make his profit, sir?

Will you explain that to Mr. Kendellen?

How does he make his profit on this transaction? [631]

A. Well, the difference between the—the difference between the price of the merchandise he pays and what he sells it to the store for.

\* \* \* \* \*

[643]

Q. Isn't it the policy of the company to have the DR men check on these displays in the stores of the distributors under their jurisdiction or assigned to them? A. I know they do in the chains.

Q. I didn't ask about the chains. A. I understand that. But I don't know anything about it with the independents. I don't know of them doing it in the independents.

Q. Well, let's be specific, if we can.

Could you name me—I withdraw that.

*Kenneth Price—for Employer—Cross*

How many chain distributors, that is, chain store distributors do you have of the 53 distributors your company is now involved with? A. I'm not sure.

I think it might be about 28.

Q. About 28 to 30? A. I believe so.

\* \* \* \* \*

[662] Q. I show you, instead, Mr. Price, Exhibit E 5F, specifically page 2 thereof (handing). A. Which part?

Q. Second paragraph from the bottom.

Do you have that? A. Yes, sir.

Q. I ask you whether that contains a provision for the payment of a warehousing charge of \$37.50? A. Yes, it does.

Q. In spite of that provision, your company now charges \$50; is that correct? A. That's correct.

Q. I see.

Now, Mr. Price, looking at that exhibit, please— A. I just want to add on that—

Q. Don't add anything.

There is no question at the moment.

Hearing Officer: Mr. Rosenberg, if he wishes to give a full answer to his last question—

Mr. Rosenberg: It only called for a yes or no answer.

You mean he wants to explain the answer after giving the answer?

Hearing Officer: Yes.

Mr. Rosenberg: Why doesn't he wait for redirect to [663] explain it.

*Kenneth Price—for Employer—Cross*

Mr. Dicker: I think he can give a full answer. He doesn't have to answer it yes or no.

Hearing Officer: I am not going to cut off his answer.

Mr. Rosenberg: Go ahead.

A. The company does charge this, as approved by the Court.

The case was taken to Court. At the time we presented the story to the men, our prices had changed and our wages and everything else had gone up.

We requested the men, after explaining it to them, to pay the \$50.

It was held in abeyance because there were a group that got together and took us to Court on it.

The Court came up with the decision that the men should pay the \$50.

Q. Now, that's incorrect, isn't that so, Mr. Price, that there was a stipulation of settlement involving one distributor and yourself that was entered into in the District Court of Nassau County, and no decision by any Court finding as a matter of law, that you had the right to violate, change, vary the terms of a written instrument between any of the men in this room and yourself?

[664] Isn't that so? A. That is not so.

Q. I'll make that statement because I have examined the record on that.

There is a litigation involving—

Mr. Dicker: I object to this.

Hearing Officer: I think the record should speak for itself.



*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: Well, that's right. Where is the record?

Hearing Officer: Or alternatively, if a—

Mr. Rosenberg: Stipulation is made.

Hearing Officer: Yes.

Mr. Rosenberg: Well, I will not stipulate to anything other than what I say.

This witness's testimony is self-serving and inaccurate.

I make that statement as an officer of the Court.

Mr. Dicker: I object to that.

He's not testifying.

Mr. Rosenberg: I don't have to testify.

Mr. Dicker: Your statements are not evidence in this proceeding.

If you want to take the stand and testify, you can.

Mr. Rosenberg: I certainly will.

\* \* \* \* \*

[679] Q. Will you explain, please, to Mr. Kendellen, how in one aspect it seems so and in another aspect it does not?

Do they get less than the 20 percent during this sales gimmick or promotional sales?

Hearing Officer: One question at a time, Mr. Rosenberg.

Mr. Dicker: Please.

Mr. Rosenberg: That's my question.

Mr. Dicker: There was another question before.

Hearing Officer: You asked him another question before.

*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: I'll withdraw it and ask it this way.

*By Mr. Rosenberg:*

Q. Do they receive less than 20 percent for the sales made during the promotional gimmick? Yes or no. A. They can receive far more than the 20 percent.

Q. Well, will you explain to Mr. Kendellen how they can receive more than 20 percent?

Explain that carefully because we are all listening carefully.

How can they get less than 20 percent?

Mr. Dicker: Objection.

He makes a speech after he asks the question.

[680] *By Mr. Rosenberg:*

Q. Please explain. A. Well, for the simply reason that during the time of this special promotion, men are permitted to take home all the merchandise they want at that 92 cents deduction—they take it home, they're charged 92 cents less.

Several of them fill their garages, they take truck loads home.

One man again had a trailer delivered to him. And when this promotional sale is all finished, last Friday, these men can take this merchandise that they've stored away, out into the stores and sell it, and they make the 92 cents besides their regular profit on it.

Q. In other words, by taking merchandise for which they get less than 20 percent, and storing it or hoarding it, they may sell it later at the regular price?

*Kenneth Price—for Employer—Cross*

Is that what you are telling us? A. They can sell it at the regular price and they make the 92 cents a dozen in addition to their regular—

Q. Now, let's go back to the time of the sale.

Did the men have any choice about selling the merchandise and earning 92 cents less during the promotional sale?

Mr. Dicker: I'm going to object to the question.

*By Mr. Rosenberg:*

\* \* \* \* \*

[707]

Once the chain store has made the decision to stop dealing with the particular distributor involved, how then or who then decides whether the distributor will receive credit from Lorenz Schneider for that stop that has been lost through either the distributor's fault or not [708] the distributor's fault? Who decides whether it's the distributor's fault or—

The Witness: Well, if it's an absolute case of dishonesty—

Mr. Rosenberg: You didn't answer his question. He said, "Who," not "What."

Hearing Officer: Who decides?

Mr. Dicker: Just let him finish.

Mr. Rosenberg: I think I—I like your question. I want an answer.

Hearing Officer: See if you can answer my question, please.

In other words, the set of facts we have is:

The distributor is out of the store.

The Witness: Right.

*Kenneth Price—for Employer—Cross*

Hearing Officer: It's a chain store. It—

The Witness: Right.

Hearing Officer: The company, Lorenz Schneider, has been involved in the discussions between the chain store individual responsible for the decision that the distributor is going out.

Who decides whether the distributor gets credit for that store?

The Witness: The company.

Hearing Officer: What criteria would they [709] normally apply?

The Witness: They would figure whether the man is charged with an act of dishonesty.

Hearing Officer: That's one example?

The Witness: That would be one example.

Hearing Officer: Of when they would not give him credit at a store?

The Witness: That's right.

Hearing Officer: Okay.

The Witness: Also, that if the manager of the store claims that the service is very poor and it can be really backed up that service has been poor, that the man hasn't been servicing the account in the way that he should in accordance with the way the store expected the service—

Hearing Officer: Then what would happen?

The Witness: —then he would lose the account on his own fault.

Hearing Officer: Well, the account has been lost.

What would the company do with respect to granting credit for that account?



*Kenneth Price—for Employer—Cross*

The Witness: He wouldn't get credit if he had just not serviced the store properly according to the store's expectations.

Hearing Officer: Suppose it was a misunderstanding.

The company, after whatever investigation it conducted [710] and in however much it participated in the discussions between the store and the distributor, the company felt it was a misunderstanding of some sort, some unreasonable position by the individual responsible for the chain store.

The Witness: This has happened.

They have gone down there and even taken the men down there and talked with them and tried to reason it out with the store managers to allow the man to continue on.

In many cases he has been allowed to continue on, in many cases.

Hearing Officer: Let's say he hasn't been.

The Witness: If he hasn't, and the company feels that the man was—it was a misunderstanding and it was a reasonable thing, why then the company will try to talk with someone to exchange the stop with the man or he'll get credit for it.

\* \* \* \* \*

[711] Hearing Officer: I don't understand the question.

Mr. Rosenberg: The stop was acquired by purchase, for which a bill of sale was delivered to the distributor.

Hearing Officer: All right.

*Kenneth Price—for Employer—Cross*

*By Mr. Rosenberg:*

Q. My question is, sir:

Isn't it a fact that the store, the stop, was sold to this distributor for which your company received a large sum of money? A. Yes.

Q. In spite of that, the company could declare it an open account, and permit another distributor, or somebody else, including the company, to service that account; is that correct? A. The company wouldn't declare it an open account.

Hearing Officer: You see, again, Mr. Rosenberg, I think it would make things clearer for Mr. Price and for whoever is reading this record, to make the distinction between losing the account and the company granting credit or not granting credit after it's been lost.

Mr. Rosenberg: I think we all understand it.

It's been very clear.

Your questions clarified any doubts that could exist in any reader's mind.

Hearing Officer: Then, for Mr. Price's and my own [712] clarity as we proceed further, let's stay away from using the words "lose the route," "lose the stop," because that—

Mr. Rosenberg: You don't like the word "lose," is that it?

Hearing Officer: I think that's been associated with the decision of the store owner.

Mr. Rosenberg: You mean by this witness saying—

Hearing Officer: Correct.

*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: —that it's the store owner who makes that decision?

Hearing Officer: Correct.

*By Mr. Rosenberg:*

Q. Let's start with that as a fact, even though it's a figment of his imagination.

Mr. Dicker: I object to that.

Hearing Officer: You know, I—

Mr. Dicker: Mr. Kendellen, there are things on the record, statements made by counsel, which have no probative value.

We are getting involved in long arguments here over counsel's editorializing.

Hearing Officer: Strike Mr. Rosenberg's reference to figments of his imagination.

Go ahead, Mr. Rosenberg.

*By Mr. Rosenberg:*

[713] Q. Let's assume that the testimony as given is correct—all right? A. All right.

Q. —without me assuming that it's the truth; all right? A. Yes.

Q. Just assume that this is your testimony; all right? A. Yes.

Q. Let's assume further that this being the case, I'm asking you:

Isn't it a fact that the distributor, who no longer has this account, for whatever reason, paid for this account—

*Kenneth Price—for Employer—Cross*

isn't that so?—and paid your company for this account?

A. They pay for all accounts, right.

Q. In spite of that, where the company determines that the distributor did not service the customer properly or satisfactorily to the customer's satisfaction, nevertheless your company will permit itself or any other distributor to take that account and service it?

Hearing Officer: Without making compensation.

Mr. Rosenberg: Right.

Q. Without making compensation to the distributor who lost the account for whatever reason.

Isn't that so? A. I would say if he lost the account by being put out [714] of the account at the store level—

Q. What is the answer? A. I would say that—

Hearing Officer: I think we better have the Reporter read back the question, Mr. Price.

(Record read.)

A. Somebody else will take it, but not the company.

Q. I think it calls for a yes, it is so or, no, it is not so. It has already been read to the witness twice.

It's a simple question.

Mr. Dicker: I think the answer was responsive.

Hearing Officer: Mr. Price, if the company makes a decision—Mr. Rosenberg's question, I believe, is:

Even though the distributor paid money for the route—



*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: For the stop.

Hearing Officer: Excuse me; for the stop, if the distributor is out of the route—is out of the stop and the company decides that there's no credit due because he's out for cause, is it true, Mr. Rosenberg asks, someone else or the company can take over that stop?

Mr. Rosenberg: With the company's consent and assistance.

Hearing Officer: With the company's consent and—

Mr. Rosenberg: I'll leave out "assistance."

[715] The Witness: No.

Hearing Officer: Why is that, Mr. Price?

The Witness: Because the part in there that says that the company takes it over is not so.

Hearing Officer: Otherwise, though, is it true?

The Witness: Yes.

Hearing Officer: All right.

*By Mr. Rosenberg:*

Q. Now, sir, your company has arrangements with that very close stock ownership and directorship of another distributor of Wise Potato Chip products, does it not?

Hearing Officer: I would like to suggest a three-minute recess.

(Short recess taken at 2:10 p.m.)

Hearing Officer: Back on the record.

Go ahead, Mr. Rosenberg.

Mr. Rosenberg: Yes, sir.

*Kenneth Price—for Employer—Cross*

*By Mr. Rosenberg:*

Q. I show you Employer's Exhibit 5F, one of the contracts that were entered into between your company and distributors (handing). A. Yes, sir.

Q. Do you recall your testimony that this contract was the one which most of the distributors signed; in other words, more distributors signed this contract with [716] your company than any group of distributors signed any other contract with your company?

Do you remember that was the one you couldn't find until you came back a day later.

That's why it was named the last number.

Do you remember that? A. That's right.

Q. What is the answer to my question? A. Yes.

Q. Looking at that exhibit, sir, I'm going to ask you whether or not this same contract is applicable to chain stores—no, I withdraw that.

Isn't it a fact that this contract is the same contract that was used for both chain store distributors and independent store distributors? A. Yes, sir.

Q. What was the answer? Yes, sir? A. Yes, sir.

Q. As a matter of fact, in paragraph 1 of said agreement, there is a line and underneath the line the word "chain" or "independent" is inserted to clarify what is to be put above that line with regard to the type of a route involved in that contract.

Is that correct? A. Yes.

[717] Q. Now, sir, I call your attention to paragraph 2 of that agreement, which reads:

*Kenneth Price—for Employer—Cross*

"The distributor agrees to purchase the route, including said number of customers and good will, and agrees to use his best efforts to distribute, procure sales for, to obtain increased space, new accounts, to merchandise and otherwise to increase the volume of sales for the authorized franchised products of the dealer, without regard to fixed or bound of territory, except that distributor may not solicit accounts outside a franchised area of the dealer."

Do you recall that provision of the contract (handing)?

A. Yes.

Q. Is it true that a—isn't it true that a distributor may not distribute or may not solicit sales of your products—may not solicit sales of your products to any store serviced by a company affiliated with Lorenz Schneider in the sale of the products?

I'm referring specifically to the Yorkshire Company salesmen, distributors. A. In other words, you're asking me if one of our distributors can go into one of Yorkshire's accounts?

Q. Correct. A. No.

[718] Q. In spite of the provisions of the contract I just read to you; is that right? A. They're considered protected accounts, nor can any of the Yorkshire distributors come into our accounts.

Q. Did you say something about you consider it a protected account, a Yorkshire account is a protected account?

A. All accounts are protected.

Q. Will you explain to the Trial Examiner what do you mean by a "protected account"? A. We mean that any

*Kenneth Price—for Employer—Cross*

account that's being serviced by the products that we handle, can't be taken away by another distributor.

Q. Even though the other distributor is not connected with Lorenz Schneider Company? A. That's right.

Q. Then would it be correct to say that the distributor who signed this contract, is not permitted to solicit business anywhere in the franchised area of the dealer if the customer he solicits for business is serviced by somebody connected with any other company selling the same products, especially if that company belongs to Mr. Brown, who owns Lorenz Schneider Company?

Isn't that true? A. Well, I'll say yes, except in the last part where you said "especially Mr. Brown."

[719] Q. You mean it's not "especially" his? A. That's right.

Q. Is there anybody else selling Wise Potato Chip products in the same area, franchised area, of Lorenz Schneider?  
A. I—

Q. Other than Lorenz Schneider, of course. A. Yes, there's another company that sells it.

Q. What is the name of this other company? A. Brookfield Sales.

Q. And how about Yorkshire, doesn't Yorkshire—isn't that also a company that sells Wise Potato Chip products in the same franchised area? A. Yes. That's the one you referred to before.

Q. So that there are at least two companies that are engaged in the sale of Wise Potato Chip Products in the same franchised area of Lorenz Schneider, whose customers may not be solicited by the distributors who have signed



*Kenneth Price—for Employer—Cross*

this contract or any of the other contracts representing Employer's Exhibits 5A, B, C, D and E; is that correct?

A. I'd have to change that to say that the Brookfield account is an institutional account, but the accounts are handled by Yorkshire.

\* \* \* \* \*

[721]

Q. Regardless of the amount of money or sales that they make or earn on their route; is that correct? A. Correct.

Q. All right.

Now, paragraph 6 of this contract, Mr. Price—that's 5-E— A. Right.

Q. —says:

“The distributor agrees to maintain accurate route books at all times and accurate customers' books.”

Do you recall that statement in this contract, sir? A. Yes, sir.

Q. Does the company require the distributor to maintain accurate route books at all times and accurate customers' books? A. No.

Q. You do not require it? A. No.

Q. Do the distributors maintain route books and customer books? A. Some do and some don't.

Q. Do you have a place in your office or premises for the placing of route books by the distributors, these little cubby holes in which they are to be placed? [722] A. If they want to, they—

\* \* \* \* \*

*Kenneth Price—for Employer—Cross*

[729] Q. I see.

Isn't it a fact that you just posted a notice over your own signature, within the last two months in the warehouse, showing the hours to be 5:30 to 6:00 and you signed your name to it, Mr. Price? A. I—

Q. Isn't that true? A. Yes, I did.

But the 6:00 referred to the time that they can get merchandise, not the closing time of the warehouse.

Q. Wasn't the opening time 5:30, not 4:00 or 4:30? A. Yes.

Q. And your prior statements were incorrect, sir? A. The notice read 5:30.

Q. What's this 4:30 you were telling us about, sir? A. 4:30 is the time that the building opens.

Q. Opens? A. Yes, for receiving of merchandise.

Q. So that you have a direct control, do you not, of the opening and the closing of the warehouse, you, yourself, Mr. Price; isn't that so? A. The warehouse is a separate—I have, yes. That's a separate unit enclosed.

\* \* \* \* \*

[734] The Witness: The one warehouse supervisor comes in.

Hearing Officer: At what time?

The Witness: At 4:30 in the morning—between 4:00 and 4:30 in the morning.

Hearing Officer: He opens up the warehouse?

The Witness: He goes into the back. He opens up the dock-receiving doors where the merchandise is received.

The trailers are there, pulled in waiting to be unloaded.

*Kenneth Price—for Employer—Cross*

Hearing Officer: And the garage doors?

The Witness: The garage is separate from the warehouse.

That's where the trucks are stored.

Hearing Officer: Who opens the garage doors and at what time?

The Witness: They are stored there throughout the time.

Hearing Officer: Who opens the—

The Witness: This operation manager comes in in the morning, he opens the other part of the building, which takes you on into the sales room, through the salesroom and into the garage.

Hearing Officer: So it's doors are also opened for entry or exit of trucks—

[735] The Witness: Yes.

Hearing Officer: —or people at the same 4:00 to 4:30?

The Witness: Oh, no.

That man comes in, as I said, at around 5:00 or 5:30.

Hearing Officer: Oh, this is a separate man?

The Witness: Yes.

Hearing Officer: A separate man from—

The Witness: There are two different men who open these areas.

Hearing Officer: He opens it between 5:00 and 5:30, the garage?

The Witness: No, generally before 5:00 or by 5:00, anyhow.

*Kenneth Price—for Employer—Cross*

Hearing Officer: Around 5:00?

The Witness: Yes.

Hearing Officer: All right.

*By Mr. Rosenberg:*

Q. Now, sir, what has the loading of a truck got to do with the garage?

Putting it another way—I withdraw that question.

Doesn't the truck of the distributor have to drive into the garage in order to get up to the loading platform of the warehouse to get his load? [736] A. The loads are staged out in the garage.

Q. Right.

So that when you said in your notice signed by you, Petitioner's Exhibit 13 in evidence, "Any distributor or salesman who is not ready to load his truck by 6:00 p.m., will not receive his load regardless of what time he pulls into the garage.

"The garage is open by 5:30 a.m. in order for all men to get as early a start as needed in order to return early."

That means that the garage is open 5:30 a.m. so that the distributor or salesman can drive into the garage to pull up to the loading platform to get a load of merchandise from the warehouse part of the garage; isn't that so? A. Yes.

Q. What does the garage got to do with when a distributor arrives to get his load of merchandise? A. When the distributor comes in the morning and picks up his truck and goes on a route, his truck is already loaded.

When he comes back at night, he loads his truck in the garage.

\* \* \* \* \*



*Kenneth Price—for Employer—Cross*

[740]

\* \* \* \* \*

What do you mean by that? What is meant by that? What is the company's policy in regard thereto? A. That in any event, that the route comes back to the company, that we would give the same amount as per the chart.

We have a regular chart on that.

This does not specifically mean that it will come back for exactly the same price it was purchased by them for because they may have added a couple of hundred dollars more on it, but they would still receive that according to the chart, they will receive credit for that.

Q. All right.

Let's go on and read that same paragraph.

"In the event a distributor desires to sell his route, or a segment thereof, to any other distributor, any time to an accredited buyer, he may or we will purchase within 30 days at the same formula as used in this sale."

Let's first go to the words "accredited buyer." A. All right.

Q. Who is an accredited buyer? A. A person who has a good background and a good record.

Q. You mean a person whom the company approves; is that right? [741] A. That's right.

Q. A distributor can't sell his route to a person that the company does not approve, can he? A. Let me also state that—

Q. Just answer the question. A. Can I—I want to finish the other answer.

*Kenneth Price—for Employer--Cross*

Q. You want to add to the prior answer? A. I didn't finish it.

Q. Go ahead, add to the prior answer. A. All right.

We have to do this because the manufacturers want to approve also.

Q. Not only you but the manufacturers want to approve? A. Right.

Q. That means an accredited buyer is one that not only Lorenz Schneider Company approves, but the Wise Potato Chip Company has to approve? A. That's right.

Q. How about any other products?

Does your company carry products other than Wise Potato Chips? Other manufacturers? A. Yes.

Q. What other products? A. Quinlan Pretzels.

Q. Does that company have to approve also? [742] A. No.

Q. How about other products? A. Old London always had to approve.

Q. Old London has to approve, too; right? A. Yes.

Q. Who else? A. That's all.

Q. Okay.

Now, the words I'm going to read, "or we will purchase within 30 days at the same formula as used in this sale."

Do you mean by that that your company will purchase the business within 30 days—the route, rather, I should say—from the distributor paying him on the same formula that is shown in this contract under which they bought it?

A. Formula, yes.

Q. You say formula? A. Yes.

Q. I see.

\* \* \* \* \*

*Kenneth Price—for Employer—Cross*

[759]

\* \* \* \* \*

Q. Now, those trucks, are they all—are they all of the same design? A. Yes.

Q. Are they all with the same coloring or painting? A. Yes.

Q. Do they all contain names or words printed on them? A. Sure.

Q. What words are printed on the truck? A. Wise Potato Chips.

Q. Does it have any emblems? A. Yes.

Q. Does the word "Borden" appear on there in the left-hand bottom corner on each side of the truck? A. I think on some of them.

I'm not sure if it's on all of them.

Q. I see.

Who painted those trucks? A. Who painted them?

Q. Yes. [760] A. They are done by ABC Painting Company.

Q. Who paid them for it? A. Who paid them for the painting?

Q. Yes. A. The Wise Potato Chip Company makes an allowance of \$175 for the painting.

Q. To whom? A. To any independent man who owns it or to Schneider Trucks, if it's their trucks.

Q. So that the trucks that are leased to the men, are painted by the company, for which they receive an allowance from the Wise Potato Chip Company.

Is that right? A. That's right.

Q. And they are all painted alike? A. Right.

Q. I see.

*Kenneth Price—for Employer—Cross*

Does the name of the distributor appear anywhere on any of those trucks?

Hearing Officer: The leased trucks now, Mr. Rosenberg?

Mr. Rosenberg: I'm talking about the leased trucks, right.

Hearing Officer: Okay.

\* \* \* \* \*

[784] I'm going to read it to you.

"For the benefit of all distributors who may be involved, the failure of the distributor to turn over to the dealer during the first week of each month, the necessary records and rebate funds to cover any of the distributor's accounts with the cooperative store or chain store, and for which the dealer is handling the rebating to said cooperative or chain store on behalf of the distributor;" that's another ground for cancellation of the contract by the dealer, is it not? A. Again, all I can say is the contract speaks for itself.

It has never happened.

Q. Let's go to subdivision (f).

"The failure"—I'll go back to 15 so the record will be clear to the reader of the record what I'm referring to.

15 says:

"The dealer may cancel this franchise and agreement for the following reasons:

"(f) by the failure of the distributor to supply the dealer with the necessary information on the first day



*Kenneth Price—for Employer—Cross*

of each month, which is required for use by the dealer in filling out reports for the Wise Potato Chip Company and other manufacturers with which advertising [785] contracts may be held."

Now, sir, does the company require, under the terms of this agreement, the distributor to turn over necessary information on the first day of each month? A. Again I'll say the same thing. The contract speaks for itself.

But I know that there are men who are not doing it, distributors who are not doing it.

Q. I see.

But most of the men are doing it, aren't they? A. I don't know whether most are doing it or not.

Q. You don't know, as the general manager, what the men are doing? A. I don't know whether most of them are doing it or not.

I know that some of them are not.

Q. I see.

Now, paragraph 17 of this agreement provides:

"Man power to operate route during distributor's illness or vacation shall be available at \$130 per week, \$26 per day for not more than five days each year, and at \$150 per week thereafter, \$30 per day."

Does the company supply manpower to operate routes during a distributor's illness or vacation, as provided for in paragraph 17 of this agreement?

\* \* \* \* \*

*Kenneth Price—for Employer—Cross*

[808]

\* \* \* \* \*

Mr. Dicker: I think the question was directed to one contract.

Each contract has somewhat different provisions. The question was directed to Employer's Exhibit 5(a).

Hearing Officer: Is that true, Mr. Rosenberg?

Mr. Rosenberg: I'm sorry, I didn't follow that.

Hearing Officer: Is it true that the question you were asking about arbitration refers to 5(a) only?

Mr. Rosenberg: That's correct.

Hearing Officer: Okay.

Mr. Rosenberg: I referred to 5(f) all day yesterday. 5(f) does contain a provision for arbitration.

This contract, 5(a), does not contain a provision for arbitration.

My last observation was only in reference to 5(a), in which I had then been questioning him.

Hearing Officer: Okay.

Mr. Rosenberg: I'm looking at 5(b). When I get through looking at it, I'm going to question him on 5(b).

Hearing Officer: Okay.

So we still have no response on the record from Mr. Price on whether there's a provision for arbitration [809] for disputes in 5(a).

Mr. Rosenberg: 5(a) contains no arbitration provision.

Hearing Officer: That's your statement. We're still waiting for Mr. Price's response.

*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: It became a question when I said "Isn't that correct," and I handed him the contract.

Hearing Officer: That's right.

And while Mr. Price peruses the contract, and while you peruse 5(b), we'll take a short break.

(Whereupon at 11:10 a.m. a short recess was taken.)

## AFTER RECESS

Hearing Officer: Back on the record.

Q. (By Mr. Rosenberg) What was your final response to that, Mr. Price? A. I read the contract.

I don't see it in there.

Q. I see.

Now, sir, the contracts subsequent to the execution of Employer's Exhibit 5(f), all contain, do they not, provisions for cancellation of the contract by the dealer for, among other reasons, the following:

"The handling by the distributor of items in addition to those which he may purchase from the dealer, which are in direct competition with those already purchased."

\* \* \* \* \*

[824] Q. Did you have occasion to work with this procedure book? A. In some cases I have.

Q. Do you discuss the procedure book with prospective distributors? A. No, I don't.

Q. Do you discuss the procedure book with anybody

*Kenneth Price—for Employer—Cross*

in the organization, whether distributor, owner, shoe shine boy, officer, or otherwise? A. No.

Q. Never talk to anybody about the procedure book?

A. Nothing that I can recall.

Q. In any event, this is the procedure book that is company policy for the distributors to follow; is that right?

A. Right.

Q. All right.

I call your attention to the second page—the pages are unnumbered in my copy; I don't know whether they are in yours or not—well, it's the second page in the book before page 1. A. This one?

(Indicating.)

Q. Yes.

There's a white sheet marked "Procedures for [825] operating independent distributor routes, Lorenz Schneider Co., Inc."

I'm not referring to that page. A. Right.

Q. The next page, all right, that has no number on it, starts on the top, "for some twenty years," and it ends on the bottom with the words, "from existing distributors"; right? A. Right.

Q. I call your attention to the last paragraph on that page, which reads as follows:

"The conclusions, with the concurrence by the distributors, shall be final; and because of the historical background, these procedures are binding upon existing distributors, and upon any new ones who purchase a route or routes from existing distributors."



*Kenneth Price—for Employer—Cross*

Is this procedure book and its contents binding upon the existing distributors and upon any new ones who purchase a route? A. Yes.

Q. I call your attention to paragraph 1, page 1— A. On the page marked 1?

Hearing Officer: "For some twenty years"?

Q. Where do you see that? A. The page following that is what you want; right?

[826] Q. I read from the last page on the page which starts "for some twenty years."

It doesn't have a number, that's why I had to give it a number so when you read the record, you can locate it.

Now, I go to the next page, which is marked "page 1."

I plead complete ignorance of their reasoning and innocence as to the preparation of this book.

Next page, which would ordinarily be page 3, is marked "page 1" and starts with a one period on top.

If we clearly understand the page I'm referring to—and from here on in they'll all have numbers on the bottom, consecutive from the number 1, which should be number 3; and if it isn't confusing enough, I'll make it even more confusing.

Mr. Dicker: I'm sure you will.

Mr. Rosenberg: You fellows prepared the book, so I'm confusing the record.

Q. I call your attention to paragraph 1 on page 1, which starts with the words:

*Kenneth Price—for Employer—Cross*

"Each distributor may handle all of the items which from time to time will be within the franchises. Products other than those of your manufacturers, must be approved by the dealer in writing, whether in direct [827] competition or not. Consideration will be given and consent will not be withheld unreasonably."

Do you see that? A. Yes.

Q. That is company policy, is it not? A. It is company policy.

Q. I call your attention to paragraph 4, that is, four paragraphs down from the top, which reads as follows:

"Each distributor must strive to obtain a reasonable increase in annual sales volume."

Is that company policy? A. I—

Mr. Dicker: I think the whole paragraph ought to be read, since—

Mr. Rosenberg: I don't have to read the whole paragraph. I'm calling his attention to that phrase and ask him whether that's company policy.

Hearing Officer: You know, if you want to explore that further, Mr. Dicker, you'll have that chance.

Mr. Rosenberg: Sure, on redirect.

Mr. Dicker: A month from now.

Q. (By Mr. Rosenberg) Would you want me to repeat that question, sir? A. This is in reference to paragraph 4?

[828] Q. Mr. Price, I just read you the clause.

*Kenneth Price—for Employer—Cross*

Hearing Officer: No, not paragraph 4.

Q. Mr. Price, I'll withdraw the question and ask it again in this manner:

The following phrase appears on that page:

"Each distributor must strive to obtain a reasonable increase in annual sales volume."

Does that correctly reflect the company policy with the distributors? A. Yes.

Q. Okay.

I call your attention to paragraph—they have numbers on the side.

Did you see that in your copy? A. They are very clear on mine.

Q. Is it clear? A. Here.

(Indicating.)

Q. I'm sorry then. If I asked you paragraph 4, I can see where you may have been confused.

It's numbered on the side as paragraph 2, although it's the fourth paragraph from the top.

Okay? A. Yes.

Q. Now, I call your attention to the following words [829] on said page—you hand me a book with the numbers covered.

You see they are covered. They deliberately did that.

Mr. Dicker: Is that on the record?

Mr. Rosenberg: No.

Mr. Held: Yes.

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Mr. Rosenberg: If it is, say I'm laughing when I said it.

Mr. Dicker: We have more speeches than we have testimony, Mr. Kendellen.

Mr. Rosenberg: That's all right.

There will be enough there to ruin your case.

Hearing Officer: Let's not try the case this way any further, Mr. Rosenberg.

Proceed with substantive issues.

Q. (By Mr. Rosenberg) The following phrase appears on the same page—and it's numbered paragraph 3 on the page:

"The distributor will sell to retail stores or to institutional accounts and may not re-sell to a subjobber or other distributors not covered by our franchises."

That, too, is company policy, is it not? A. That's company policy.

Q. Next phrase I want to call your attention to. There is a provision contained on that page which reads [830] as follows:

"It is recommended that all distributors conform to the suggested prices."

Is that company policy? A. That it's recommended that all distributors conform to suggested prices, yes.

Q. That's your policy; right? A. Yes, that's our recommendation.

Q. The following phrase appears in these rules or procedures, same page, subparagraph 6:



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"If a sale is contemplated by a distributor to an individual or corporation, the dealer reserves the right to check the character, credit, and background of such prospective purchaser to help in making a final determination as to whether the transaction should be consummated."

Is that company policy? A. Yes, sir.

Q. Subparagraph 7 in the same page contains the following phrase:

"A distributor is permitted to give away free merchandise as a gift or contribution to a charity, charitable institution or similar organization."

Is that company policy? A. Yes.

Q. Is there any provision in these book of procedures [831] about the distributor giving away the merchandise to anybody else, free merchandise to anybody else, other than a charity, charitable institution or similar organization, that you know of?

Do you know of any such— A. Not that I know of.

Q. All right.

Same page says:

"We have found it worthwhile to create forms of contests from time to time to promote distributor sales."

Is that company policy? A. Yes.

Hearing Officer: Mr. Rosenberg, if you're going to continue much further reading directly from this book, we might—

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Mr. Rosenberg: No, I'm going to some particular phrases.

I ask you to be indulgent, for the decisions of the National Labor Relations Board are specific in regard to these items which I'm reading. I have decisions which cover it.

I want the record to be clear that this is the policy of the company in regard thereto.

Mr. Dicker: Mr. Kendellen, the witness testified—

Mr. Rosenberg: There may be many things in this [832] book which may be innocuous in this—whatever they call this book—procedure book.

Mr. Dicker: Mr. Kendellen—

Mr. Rosenberg: But I'm asking specifically about company policy in regard to these procedures by the company.

Mr. Dicker: Mr. Kendellen—

Hearing Officer: Just let me finish what I want to say first.

Mr. Dicker: All right.

Hearing Officer: The point that I'm suggesting is the possibility that the witness, if such is the case, can testify that the entire book is company policy, since—

Mr. Dicker: The point I'm trying to make is he already has testified to that on direct examination.

Hearing Officer: And will this accomplish your purpose, without subjecting both everyone in this room and the reader of this record to a re-reading of whatever phrases you have selected from it?

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I have tolerated so far.

Mr. Rosenberg: I have a number of them that I want to ask specific questions on in cross-examination.

Hearing Officer: Would you state the purpose?

Mr. Rosenberg: They were alluded to in direct.

The stated purpose is to show that the distributors [833] here are employees within the meaning of the decisions of the National Labor Relations Act.

That's my purpose.

Hearing Officer: But what is the necessity for asking those questions when the document stands?

The document has been stated by Mr. Price that this is—

Mr. Rosenberg: There are some contradictions in here.

Hearing Officer: I'm not denying you the right to explore that.

Mr. Rosenberg: That's right.

Hearing Officer: So far, however, you have read things that are—

Mr. Rosenberg: Correct.

Hearing Officer: —done no more than read a section and ask if it's company policy.

Mr. Rosenberg: Right; and specifically that's the question.

Now, you're going to find a few others that I read that are going to be contradictory of statements made before by this witness.

Hearing Officer: If you have any areas such as that that you want to explore, that will certainly be allowed.

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[834] But unless you have some good reason to the contrary, we are not going to continue reading from this document and asking: Is this company policy?

We'll take an over-all statement from the witness that everything contained in this book is company policy.

Q. (By Mr. Rosenberg) Is it company policy for the distributors to wear a uniform?

Mr. Rosenberg: You don't mind if I ask that question, do you?

Hearing Officer: Of course not.

Mr. Dicker: Is there a question?

Mr. Rosenberg: Sure there is. There is just not an answer so far.

A. Yes.

Q. Is it company policy for dealer personnel—that means employees working for the company—to train distributors?

A. What one is that again?

What number is that, Mr. Rosenberg?

Q. No number. A. Oh, I thought you were—

Q. The Examiner didn't like the idea that I made it easier for you by asking you numbers.

He said no numbers, don't refer to any paragraphs, just ask you questions.

[835] Hearing Officer: Mr. Rosenberg, I did not make that statement at any time.



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Mr. Rosenberg: Well, when I read it to the witness and asked if it's company policy, you stated it's already in there.

Now, I want to ask him a question is this company policy? I'm not referring to any exhibit in asking the question.

Hearing Officer: That's entirely proper.

Mr. Rosenberg: All right.

Q. (By Mr. Rosenberg) would you answer it, please, Mr. Price? A. Ask it again, please.

Hearing Officer: Mr. Reporter, would you read the question back.

(The question was read by the hearing reporter as follows:)

"Question: Is it company policy for dealer personnel—that means employees working for the company—to train distributors?"

A. Yes.

Q. Is it company policy that the stores, the customers of the distributors, must be served at least once a week?

A. Yes.

[836] Q. And for larger independent stores and chains, as many more times each week, other than once a week?

A. Yes.

Q. Is it the company policy to make spot checks on the customers of the distributors?

Hearing Officer: Define "spot checks."

Mr. Rosenberg: That's the word I'm using.

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Hearing Officer: Could you define it for us, please?

Mr. Rosenberg: At the moment, I would rather not. I have a reason for asking this question. I would clarify it with the next question.

If the witness says he doesn't know what a spot check is, then we'll have a different story.

Hearing Officer: I don't think the reader of the recorder would have to guess at this point what a "spot check" is.

Mr. Rosenberg: I think it's very simple English. If you object to it, I'll ask it in a different way.

Q. Do you know what a spot check is? A. I could give you my interpretation of a "spot check."

Q. Would you please give us your interpretation of what you mean when you say "spot check"? A. It would be just for to drop in various stops from [837] time to time just to see how the store looks, how it's being serviced, how well it's being serviced, and the condition of the merchandise as to—

Q. And the display of the merchandise? A. The display, the condition the merchandise is in.

Q. I see.

Now, with that interpretation of the meaning of the words "spot check," is it company policy to make spot checks on the customers of the distributors? A. Yes.

Q. All right.

Is it company policy that a distributor may not sell to an account already sold by another distributor or by another company known as Yorkshire? A. Yes.

Q. Is it company policy that where stores merge or form new co-ops, should one distributor sell or exchange

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an account with another distributor, the weekly average of sales of such accounts must be used as a measure of value and such differences in amounts should be paid for at the current ratio provided in the procedure book? A. Yes.

Q. The answer to that was what? A. Yes.

Q. Okay.

[838] Is it company policy that such an exchange between distributors owning their own routes must be registered with the dealer? A. Yes.

Q. Is it company policy that if a customer of a distributor is not served within seven days after it reopens for any reason—if it has closed and then reopened—it should be considered an open account? A. Yes.

Q. And that the first distributor, not necessarily the one who bought that stop, who sells merchandise to that stop, will then own that stop as his permanent account? A. Yes.

Q. Without payment to anybody for it? A. Yes.

Q. I see.

Is it company policy that where an account moves from one location to another, that is, a distributor's account purchased by a distributor, but within a thousand feet of the previous location, it remains the property of the distributor who bought it and serviced it prior to its moving—

Mr. Dicker: Mr. Kendellen, Mr. Rosenberg is—

Q. —provided only the original location—

\* \* \* \* \*

[855]

Q. (By Mr. Rosenberg) How about the sale by a [856] distributor to a store that he did not buy from your com-

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pany and which is being serviced by another distributor; what is the company policy in regard to such a situation?

A. I'm afraid I didn't understand that question.

Mr. Rosenberg: Would you repeat it to the witness.

(The last question was read by the hearing reporter.)

A. Well, again all accounts are protected and he can't sell to another account that's being serviced.

Q. The question is:

What happens if he did sell to an account that another distributor was serving? A. He would be told to stop selling to him.

Q. Wouldn't he be required to return all the profits that he earned on that sale to the distributor to whom you had previously sold that stock? A. He would have to give the commissions of the merchandise that was sold in that store to the distributor who owned the account.

Q. And who would enforce such provisions? A. Who would enforce it?

Q. Yes, sir. A. Well, if it were—if such an incident happened, it would be the general sales manager.

\* \* \* \* \*

[861]

Q. (By Mr. Rosenberg) Now, if he refuses to get it, [862] what is the company policy in that regard? A. If he refuses to get it, what is the company policy?



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Hearing Officer: Under the circumstances you just described.

The Witness: I see.

A. (Continuing) Well, he'd be directed to buy it and put it in there because the store wants it, otherwise they'll throw him out of the store.

Q. The company would be able to and would recoupe the route, would they not, under those circumstances? A. You mean by purchasing the route?

Q. Right. A. Possibly.

Q. The distributor would have no alternative but must purchase the stands, place them in the customer's premises if the customer insists; that's company policy, correct?

A. Correct.

Q. I see.

Now, would you tell us, please, Mr. Price, route books, does the company require the distributors to maintain route books? A. They suggest that they do.

\* \* \* \* \*

[864] Hearing Officer: Okay.

(Whereupon, at 12:55 o'clock p.m., a luncheon recess was taken until 2 o'clock p.m.)

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AFTERNOON SESSION

2:15 p.m.

Hearing Officer: Back on the record.

Go ahead, Mr. Rosenberg.

*Cross Examination by Mr. Rosenberg (Cont'd):*

Q. Mr. Price, is it company policy—I withdraw that.

Isn't it a fact that the distributor is only permitted to remove their route book from the company-supplied bins for overnight only? A. That's not true.

Q. Men are permitted to remove the books and not return them at all? A. Yes.

Q. Does the company maintain any facilities for customers of the distributors to call in for orders or to complain about service? A. They have telephones and they call in.

Q. But does your company accept telephoned orders from stores serviced by the distributors? A. They accept the order, yes.

Q. And what do they do when such an order comes in? [865] A. They put it in the bin.

Q. What bin? A. They attach it to the bin that the man has for his route books.

Q. What is this thing that they put into the bin? Will you describe that for the record. A. It's what they call a "call" slip.

It's a little slip, and they write on there whatever the name of the customer is, whatever the complaint might be or whatever merchandise they want.

Q. I see.

*Kenneth Price—for Employer—Cross*

Are any of these calls for merchandise serviced by the company where the customer insists upon immediate delivery of such merchandise? A. Not to my knowledge.

Q. Does the company send the DR man with any special deliveries of merchandise at any time for any reason?

A. Not to my knowledge.

Q. The company never fills an order no matter how urgent it may be conveyed to them to be by the customer?

A. I don't know of any.

Q. Would you say that the company does not do that?

A. To my knowledge, they don't.

Q. I see.

Now, you already told us that a distributor is [866] not permitted to solicit customers on any account serviced by anybody else selling Wise Potato chips, no matter from what company the service to that customer is from.

Is that correct? A. Yes.

Q. All right.

Does the company have any policy in regard to the opening of a new store in the area of a distributor—a new store being—first, we'll go to a supermarket or a chain store.

Is a distributor free to solicit business in that store?

A. No.

Q. Is that company policy? A. Yes.

Q. Is there any provision in any agreement that you can point to which gives the company such a contractual right?

A. Is there anything that I can point to?

Q. Yes, in any of the contracts, or the procedure book, which prohibits it.

(Handed to the witness.)

A. Which prohibits it?

*Kenneth Price—for Employer—Cross*

Q. Yes, prohibits a distributor, forbids a distributor from soliciting a new store opening in his area.

[867] Hearing Officer: A new chain store?

Mr. Rosenberg: A chain store.

That's what we're talking about; right.

Hearing Officer: Okay.

A. Would you repeat the question.

Mr. Rosenberg: Read it back, please.

(The last question was read by the hearing reporter.)

A. No.

Q. There is no provision that you know of in any agreement which authorizes the company to maintain that company policy; correct? A. Yes.

\* \* \* \* \*

[878] Q. Now, sir, isn't it the job of the DR men to check with the customers to see if they are satisfied with the service they are getting from the distributor in connection with their stores? A. The customers' stores?

Q. Yes. A. When you say that, I don't understand exactly what—specifically what you mean.

Mr. Rosenberg: Would you repeat the question to the witness.

Let's see if he can understand it.

Hearing Officer: Well, Mr. Price, what part of it don't you understand, or all of it?



*Kenneth Price—for Employer—Cross*

The Witness: Well, repeat the whole thing.

(Whereupon, the last question was read by the hearing reporter.)

A. Not necessarily to check and find out if they are satisfied with the service.

That isn't a necessary part of their job.

Q. Are you telling us that the DR men are not obligated to check with the store to see whether they are satisfied with the service they are getting from the distributor?

A. That's right.

Q. What do they go to these stores for? What do the [879] DR men go to the stores for? A. I explained that to you this morning.

Q. Explain it once more, please. A. They go into the stores and look over the merchandise, see if the merchandise is kept right and rotated, to see the condition of the merchandise and the displays in the store.

Q. Do they identify themselves to the stores as to who they are? A. I would suppose they do.

Q. And is there any company direction or instructions to these DR men in discussion their presence in the store with the store management? A. It's possible that it would be.

Q. What instructions are given, do you know? A. No.

Q. Now, is the purpose of the—is it the purpose of the DR men in going to the stores, among other things, to see whether the company is satisfied with the way the display of the merchandise is set forth or is put out by the distributor? A. To see whether the company is satisfied?

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Q. Yes. A. Yes, I would say so.

Q. All right.

[880] And where the company is not satisfied with the display of the merchandise in the store by a distributor, what's the next step for the DR man? A. I would say that he talks to the man about it and tries to explain—

Q. What man? A. To the distributor.

Q. I see. A. —and tried to explain to him the best way of setting up a display, and so forth, for him to get better sales.

Q. I see.

And what if talking to the distributor gets no results, what's the next step for the DR man? A. Well, I wouldn't know.

Q. Well, isn't he supposed to report that to his superiors? A. I wouldn't say so in all cases, but I would say that there would be times—that there are times when he would.

Q. Now, you know of many times that the DR men did inform their superiors of lack of cooperation by distributors; isn't that so? A. Yes.

Q. And wasn't the next step for the distributor to [881] be called in for a conference with the DR man or his—the DR man's superior? A. This has been done.

Q. And that's been done often, hasn't it? A. It would all depend on what you call "often."

Q. Well, say every week, at least one of the distributors may receive a call to come in to sit down and discuss the DR's reporter? A. I doubt that very much, that it would be that often.

*Kenneth Price—for Employer—Cross*

Q. Well, how often would you say? A. Well, possibly once in three weeks.

Q. Now, sir, where the DR man calls in or where the distributor is called in for this conference, what is the purpose of the conference?

Can you explain that to us here, please. A. The purpose of the conference is to try to help the man to do a better job, to give him a better understanding of what can be done out in the field for better sales.

Q. That's to improve the sales record of the distributor; right? A. To improve his sales, yes.

Q. Has the distributor ever been told that his attitude towards the store personnel should change for [882] the better? A. It's possible that he has been.

\* \* \* \* \*

[885] Does the company employ individuals described by the company as "sales promotional men"? A. Yes.

Q. They are different from DR men, are they? A. Yes.

Q. How many sales promotional men do you have? A. I believe it's three at the present time.

Q. What are their duties or functions, sir? A. They cover any open routes we might have or they run vacation routes or absence days.

Q. Do they help sell merchandise, company's merchandise, through the distributors to the distributors' customers in any manner, shape or form whatsoever? A. Except that they run their routes.

Q. Do the sales promotional men visit any of the stores other than when they are covering a route for a distributor who may be on vacation? A. Not to my knowledge, they don't.

*Kenneth Price—for Employer—Cross*

Q. Now, on the 7th of June, 1972, you testified that the company has terminated a contract for dishonesty, a distributor's contract.

Do you recall such testimony? A. I said that there was a man that was forced out because of a Bohack situation where he got caught stealing.

[886] Q. Now— A. And he sold his route, including—

Q. Now, sir, who forced him out? A. Who forced him out?

Q. Yes. A. He was—

Mr. Dicker: I object to the question.

I think—forced out?

Mr. Rosenberg: What was his testimony?

Hearing Officer: Right.

Mr. Price, what exactly do you mean "forced out"?

Mr. Dicker: I don't believe Mr. Price used those words.

Hearing Officer: Yes.

Mr. Rosenberg: Yes, sir.

The Witness: When I said "forced out," I meant he was selling the Bohack store where he got caught stealing.

He was told that he would not be able to service any Bohack stores.

Hearing Officer: By whom? By the Bohack Stores?

The Witness: By the Bohack Company, that he could not go into any of their stores.

So the largest portion of his livelihood was Bohack's Stores. Therefore, he had no choice but to [887] sell the route.



*Kenneth Price—for Employer—Cross*

Q. (By Mr. Rosenberg) Did the company direct him to sell the route? A. The company direct him?

Q. Yes, sir. A. The company didn't force him to sell the route.

Q. Well, what did the company do about the Bohack Stores that were not being serviced by this distributor?

A. They took—they took it and ran it for him until he sold the route.

Q. As a matter of fact, the company called him in and told him that he has to sell his route or lose it; isn't that so? A. No, sir.

Q. When did this happen? A. When?

Q. Yes, sir. A. I couldn't place a date.

It might be a year ago, eighteen months, or something like that.

Q. Approximately within a year or eighteen months ago?

A. It might be around that time.

Q. What was the name of the man? A. James Harden.

[888] Q. You would know him if you saw him, wouldn't you? A. Yes.

Q. Didn't you have a conference with James Harden and told him that he has to sell his route? A. Me?

Q. Yes, you have a conference with him in your office in which you told him that he has to get out and sell his route? A. No.

Q. Did you have a conference with him in your office after the Bohack Stores complained that he had been stealing? A. Yes.

Q. What was the purpose of that conference? What did you—I withdraw that.

What did you discuss with Mr. Harden? A. Discussed the whole situation.

*Kenneth Price—for Employer—Cross*

Q. Well, tell us what you said to him and what he said to you. A. Well, I don't recall specifically what he said to me or what I said to him.

Hearing Officer: To the best of your recollection, could you describe the conversation that you had with Mr. Harden?

[889] The Witness: Well, the conversation was in reference to the fact that Bohack had stopped him from servicing any of his accounts—their stores.

Of course, his reaction was that if he wasn't able to service them, that he wouldn't be able to go on making a living.

Q. (By Mr. Rosenberg) What did you tell him to do? A. Well, he had his choice of what he wanted to do.

Q. What did you tell him to do? A. I didn't tell him to do anything.

Q. Well, why did you call him in? A. To discuss the matter with him.

Q. What was your discussion about? A. It was relative to what I just told you about, that we were discussing what had happened in the store and the fact that Bohack wasn't going to allow him to service any of their stores.

Q. Why was that a concern of yours? A. Why was that a concern of mine?

Q. Yes. A. Well, naturally, anything that happens in the chain stores is a concern of ours.

Q. Well, wasn't it his customers? Didn't he buy them from you? A. Yes, they were his customers that he bought.

*Kenneth Price—for Employer—Cross*

[890] Q. And didn't he own them? A. Yes, he did.

Q. Well, what was it your concern as to the difficulties he was having with Bohack? A. Well, it was my concern for the simple reason, too, I know that anything that would happen as a result of it, that everybody would be thrown out of the Bohack Stores and all of the boys would have problems.

Q. Therefore, you were concerned to see that he gets out; right? A. Not necessarily.

Q. Well, what then was your concern with regard to him? A. As to what he wanted to do with his future.

Q. Why was it your concern as to what he wanted to do with his future? A. Because he was one of the distributors there.

Q. Does that make you his father?

Mr. Dicker: Objection.

Hearing Officer: Rephrase your question, Mr. Rosenberg, please.

Q. Does it make you paternally interested in him because he is a distributor, or is there a reason more in connection with the interest of the Lorenz Schneider Company? [891]

A. Well, the man wants to know if he can't handle the Bohack Stores and can't service them, what can he do; right?

Q. What did you tell him he could do? A. He had a choice of going ahead and servicing his route or he could sell it, whatever he wanted to do.

Q. Did you tell him that he had a choice that he need not serve the Bohack Stores and could continue to work his route, or is it a fact that you told him that he either must

*Kenneth Price—for Employer—Cross*

make arrangements to have the Bohack Store serviced or he must sell out? A. I didn't tell him that.

Q. Well, what did you tell him about the Bohack Stores and servicing them? A. I just said, I told him that he wasn't allowed to service any of the Bohack Stores.

Q. How did you know about that? A. Well, we had been told that he couldn't service them.

Q. By whom? A. By Bohack's.

Q. Did you tell Bohack Stores that this man was an independent business man and he owned the stop and you had no choice or no control over the manner and means in which he did his business? [892] A. Yes.

Q. What did Bohack tell you? A. They said he couldn't service any of the stores.

Q. And then why did you call in the distributor? A. To talk to him about it.

Q. Did you tell the distributor what you were told by the Bohack Stores? A. Yes.

Q. Did you tell the distributor that you'll give him any particular period of time to sell out his route? A. No.

Q. Did you point out to the distributor that the procedures book permitted you to take away the Bohack Stores from him for dishonesty and to terminate his contract, as well? A. No.

Q. Did you discuss the dishonesty provisions of your company in regard to distributors? A. I—

Q. I'll withdraw that question.

Did you discuss with him the company procedures and policy in regard to dishonesty of a distributor with a customer? A. I don't recall doing that.



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Q. Now, you told us before lunch that the company does [893] have a policy of terminating a distributor who is dishonest with a customer; isn't that so? A. I told you that we have never done that.

Q. Well, didn't you tell us on the 7th of June, 1972, that the company has terminated a contract with this man for dishonesty? A. I said at the time that the man had been forced out of it because of the Bohack situation.

Q. When you say he was forced out, do you recall exactly what you testified to, sir? A. No, not word for word.

Mr. Rosenberg: Give me a few moments, I would like to find that spot in the transcript.

You wouldn't, by chance, Mr. Kendellen, have notes which would indicate approximately what time of the day this testimony took place, otherwise—

Mr. Dicker: It was during the daylight hours.

Hearing Officer: June 7th?

Mr. Dicker: I think it was June 8th. I don't want to argue.

Mr. Rosenberg: It's possible.

Mr. Dicker: Do you want to correct the testimony?

Mr. Rosenberg: No, sir.

My notes say June 7th, but I say it's possible.

Hearing Officer: Off the record.

[894] (Discussion off the record.)

Hearing Officer: Back on the record.

Q. (By Mr. Rosenberg) Now, Mr. Price, do you recall the following questions and answers being placed and given

*Kenneth Price—for Employer—Cross*

by you on June 7, 1972, page 422 of the transcript, bottom of the page:

“Question: Mr. Price, has any contract ever been terminated, to your knowledge, pursuant to those provisions?”

“Answer: One for dishonesty.”

Do you recall that question and that answer, a question put to you by Mr. Dicker? A. Yes, sir.

Q. Was that the same individual you told us about on cross-examination just a few minutes ago? A. That's correct.

Q. All right.

Now, when was this contract terminated for dishonesty?

A. Well, let me say this:

I meant that the whole thing was brought around through dishonesty on the part of the man.

Q. But you did testify in direct examination to a question by Mr. Dicker, your lawyer, that a contract was terminated for dishonesty; right? [895] A. That's right, but I meant on dishonesty—

Q. But you now want to explain it away? A. I don't want to explain away anything, I just want to explain it the way it is.

Q. Go ahead. A. It was brought about by dishonesty on the part of the man.

I didn't mean that we terminated him for that ourselves, but it was brought about because of this, this dishonesty thing.

Q. You didn't mean what you said; is that it? A. That the fellow was forced out—

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Mr. Dicker: Let him finish.

Hearing Officer: Let him finish first.

Mr. Rosenberg: All right.

A. The fellow was forced to sell because he didn't have the wherewithal to continue on after his Bohack Stores.

Hearing Officer: Okay.

And in the interest of clarifying this, I would like to go back a little further, Mr. Price, to the same page, the question from Mr. Dicker preceding the question that Mr. Rosenberg asked, and possibly I'll clarify some of—at least as far as I'd like to fill out the context in which that question was asked of you.

\* \* \* \* \*

[917] Mr. Rosenberg: Even though incorrect.

Mr. Held: Well, that might be. The record will reflect that.

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: Back on the record.

Mr. Rosenberg: Mr. Stenographer, repeat the question to the witness.

Fortunately everything else was off the record.

(Whereupon, the pending question was read by the reporter.)

Q. By the "company," we mean Lorenz Schneider Co., Inc. at all times.

*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: Okay?

Mr. Held: All right.

A. Not at all times.

Q. There are times when the company doesn't inform anybody of this promotional contest, keeps it a secret? A. No.

Q. Would you please describe the times when they do advertise and notify everyone of these promotional affairs?

A. Now, you are talking about advertising and you are—

Q. I want you to answer the question.

Hearing Officer: Just a moment, Mr. Rosenberg.

[918] Q. I want you to answer the question.

Hearing Officer: Just a moment, Mr. Rosenberg.

Mr. Held: He's answering the question.

You have two parts to the question.

Either let him answer them separately or ask each one separately.

Is he permitted to make a speech? If so, I want to make one, too.

Hearing Officer: Mr. Held, please also restrain yourself and let the witness answer the question.

The Witness: I feel I have a right to know—

Mr. Rosenberg: I asked you the other day to limit all objections to objections without speeches.

You didn't answer on that.

Would you like to give me a ruling on that?

Both sides will refrain from making speeches with their objections.

Mr. Held: Mr. Rosenberg, you are a little bit late in the game with that.



*Kenneth Price—for Employer—Cross*

Hearing Officer: Just a minute, Mr. Held, please.  
Of Course, Mr. Rosenberg, I don't believe that the question requires a ruling.

Of course no speeches are to be made with or without objections.

[919] Mr. Rosenberg: Thank you.

The Witness: I just want the right to know what he's asking me.

Hearing Officer: That's a perfectly legitimate question.

Mr. Rosenberg: Let's have the question re-read to him.

Hearing Officer: Fine.

(Whereupon, the record was read by the reporter as requested.)

The Witness: I don't understand it because of the fact that he's saying advertising.

Mr. Held: Let it be re-read back again.

Mr. Rosenberg: If you—

Hearing Officer: Just a minute, Mr. Rosenberg. Let's not argue over this.

A. You see, the reason I can't answer the question about advertising, I don't know whether you mean whether they advertise in the papers or on point of sale or just what you are referring to.

This is the reason I say; or are you just asking me do they ever run one without telling the men about it?

Q. No, that's not my question.

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Mr. Held: What is your question?

[920] Hearing Officer: Please.

Mr. Held: I'm sorry.

Q. (By Mr. Rosenberg) You told us not at all times does the company publicize these promotional sales or contests.

Do you recall making that answer to a question a few moments ago? A. Yes.

But I'm referring—

Q. My question now is:

Would you tell us of the times when they do publicize such contests or promotional affairs? A. If you are talking about publicizing notifying the men, I would say at all times.

If you are talking about advertising, sometimes.

Q. All right.

Let's go now to the advertising, since we know that the men are always notified by the company. A. Right.

Q. When do they advertise? A. The advertisements are run in advance on point of sales.

Q. Where is the advertisement run in advance, or what media? A. Well, in trade papers.

[921] Q. Name them, or some of them. A. Well, Modern Grocer, sometimes, I believe, in the Grocer Graphic.

Q. I'm sorry, I didn't get the last one? A. Grocer Graphic.

Q. Grocer Graphic, okay.

Go ahead.

Any other publications? A. Nothing that I can think of right now.

*Kenneth Price—for Employer—Cross*

Q. Now, these—what did you say; Modern Grocer? A. Yes.

Q. Modern Grocer and Grocer Graphic are magazines catering to the trade; is that right? A. Trade papers, yes.

Q. Is that right? A. Yes.

Q. And they are subscribed to, to the best of your knowledge, by all retail stores handling products such as those sold by your company through the distributors; isn't that so? A. Not all, but by a large majority, I would say.

Q. Right.

So that this publicity through advertising through the media of these two magazines would reach most, if not all—would reach the attention of most, if not all, of [922] the customers of all the distributors; isn't that so? A. Right.

Q. And they would contain the prices, these magazines, that is, would contain the prices to be charged to the grocers during this advertising or sales promotional campaign; isn't that so? A. I believe in some cases they do, and I don't believe in all cases.

Q. Not in all cases? A. I don't believe so.

Q. I see.

Now, additionally, in addition to notifying the trade through these two publications or magazines, does the company employ the direct mail approach to customers? A. Direct mail?

Q. That is, by mailing them literature or information of a forthcoming or presently-existing sales promotional affair? A. I believe that after the chains have been contacted, then there is a mailing that goes out to the buyers.

*Kenneth Price—for Employer—Cross*

Q. Now, does such a mailing list exist with the company?

A. Yes.

Q. Will you please bring—

Mr. Held: No.

[923] such mailing list to this hearing?

Mr. Held: I would like to know the relevance of the mailing list between Lorenz Schneider and the chain stores to this proceeding.

The names of the chains?

Mr. Rosenberg: My question was not limited to chains, but a mailing list of the customers of those who are purchasing merchandise sold through this company through its distributors.

Mr. Held: I would like to know the relevance of that to this proceeding.

Mr. Rosenberg: I don't have to convince him of the relevance.

I think you can see the relevance insofar as prices being given to the customers of the distributors.

Mr. Held: What would that have to do with the list of the people to whom they are mailed?

Mr. Rosenberg: Knowing which customers, if not all the customers, get such a listing; that's the purpose of it.

If he will say that the list includes all of the customers of all of the distributors, I will not ask him to produce the list.

Mr. Held: Well, what if he says it is less.

Why don't you ask him the questions?

[924] Mr. Rosenberg: I did ask him; he says to some of them.



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Mr. Held: So he said to some.

I would like to know the relevance.

Mr. Rosenberg: The relevance, of course, is beyond question.

Mr. Held: Well, that's your characterization, but what is it?

Mr. Rosenberg: Right.

Hearing Officer: Please explain what the relevance is.

Mr. Rosenberg: I just got through telling you that.

If he notifies the grocer on the corner that they have a promotional campaign and the price of potato chips or peanuts or whatever the heck it is, is 15 cents, the price is fixed, isn't it?

The distributor comes in, he's got a price for him, hasn't he?

And that goes to the case and to the heart of the decisions as to the manner and means of control.

Mr. Held: There has been testimony—

Hearing Officer: Then can we discuss on the record as part of Mr. Price's testimony—

Mr. Rosenberg: Why do I have to tell him in [925] advance and him what my purpose is?

Why shouldn't you be able to see it?

Why do I have to tell him in advance what I'm looking for?

Mr. Held: Mr. Rosenberg, is there ever a possibility that maybe it isn't relevant and maybe the hearing officer is correct?

*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: There is such a possibility, but highly improbable.

Mr. Held: Well, I think in this instance he is correct.

Just because you assume it is relevant does not automatically make it relevant.

Mr. Rosenberg: Come on, the decisions are clear on it, and Mr. Kendellen knows the decisions.

Hearing Officer: Nobody is disputing, Mr. Rosenberg, whether the fact that prices are set by Lorenz Schneider as opposed to by the distributors, whether that is relevant to this proceeding.

What is in dispute is the necessity of the list of names of stores that receive certain literature.

What we are trying to resolve is whether Mr. Price can testify adequately on what is the relevant information for this proceeding.

Now, from my understanding of the testimony and [926] of your questioning so far, what we have established is that the company maintains a mailing list—I don't even know if there's more than one mailing list, if it's broken up to give segments for different occasions; I think all of these things can be explored.

The company has indicated, at least an initial hesitation to produce the names of the people on the mailing list.

Mr. Rosenberg: The fact that they hesitate to produce it cuts no ice with me.

Hearing Officer: It may not.

Mr. Rosenberg: The question is whether it is relevant to the proceeding.

*Kenneth Price—for Employer—Cross*

Hearing Officer: I am indicating to you at this moment, I think to use your phrase, cut no ice, and I would like to explore the matter on testimony before we go any further on a list of names.

Mr. Rosenberg: Okay; in other words, you're holding back your decision on this until you hear more?

Hearing Officer: That's correct, precisely.

Mr. Rosenberg: Okay. Let's proceed.

Q. (By Mr. Rosenberg) Now, sir, do you have more than one mailing list for such purposes? A. I would doubt it.

Q. Does the list include the names of all customers [927] of the distributors or Lorenz Schneider Co.? A. No.

Q. What names are excluded?

Hearing Officer: Not by name but by category, if you can describe it in that manner.

A. I would say any independent that is not a part of a chain or co-op or association.

Q. Is excluded?

You have no such names on the list; is that correct?

A. As I understand?

Q. Yes.

You have no such independents on the list? A. Not to my knowledge, we don't.

Q. Do you know or do you just suspect or imagine? A. To my knowledge, they don't.

Q. What does that mean?

Does that mean you don't know whether they do or they don't or they don't have them? A. I don't know whether they do or they don't.

*Kenneth Price—for Employer—Cross*

Mr. Rosenberg: Now I ask for the list to be produced so we can see whether it does or it does not.

Mr. Held: Mr. Kendellen, the witness has testified that, to his knowledge, there are no independents on the list.

\* \* \* \* \*

\* \* \* \* \*

[949]

How many of the presently employed DR men were employed as supervisors at or immediately preceding the execution of the contracts marked Employer Exhibits 5A through F? A. All but one.

Q. How many? That's the number now. It calls for a number, Mr. Price. A. Four.

[950] Q. I beg your pardon? A. Four.

Q. How many do you employ in all at the present time? A. Five.

Q. Were there five supervisors at the time of the execution of the contracts in '67? A. Yes.

Q. Exhibits 5A through F? A. Yes.

Q. One left since 1967? A. Yes.

Q. And he was replaced? A. Yes.

Q. All right.

Now, sir, what were the duties of these four men immediately preceding the execution of the contracts in 1967, 5A through F? A. At that time they were supervisors.

They had a group of men for which they were responsible for their sales.

They rode with them on the routes. They talked with them. They tutored them in general. They watched their sales.

They went out into stores and helped them, worked [951] with them. They helped them put in stands.



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They set up displays and talked with storekeepers. They were getting more items in the store, a greater distribution of items, which they helped them with.

I would say, in general, that would be their outline of the job.

\* \* \* \* \*

[994]

Hearing Officer: To what extent, Mr. Price, [995] does the—to your knowledge—do the customers of the distributors subscribe to this publication?

The Witness: I don't know.

Q. Your company advertises in such publication, does it not? A. Yes.

Q. Do the advertisements placed by your company in this publication contain the prices to be charged to the grocery or the supermarket or the independent store handling the products by the distributor? A. Sometimes yes, sometimes no.

Q. Don't they also contain the prices—

Mr. Held: I object.

I think he just answered that.

Hearing Officer: Sustained.

Mr. Rosenberg: I am asking how if it isn't an incorrect statement.

Q. Isn't it a fact that you always advertise the prices?

Hearing Officer: I'm not going to allow the question.

*Kenneth Price—for Employer—Cross*

He's answered it already.

Mr. Rosenberg: What's the answer to that question, if he's answered it?

Mr. Held: He said sometimes yes, sometimes no.

[996] Mr. Rosenberg: Now I'm saying to him:

Isn't it a fact, however, that you also place the price in such advertisement?

Mr. Held: I object.

He just answered that question.

Hearing Officer: Sustained.

If you have any dispute with the witness' statement, Mr. Rosenberg—

Mr. Rosenberg: I certainly do.

Hearing Officer: —then you can—

Mr. Rosenberg: I'm asking him whether or not he wants to correct that statement by changing.

Hearing Officer: Ask him that question.

Mr. Rosenberg: Well, that's what I am asking him.

Q. (By Mr. Rosenberg) Isn't it a fact that you are mistaken, that company, in fact also advertises the prices to be charged to the storekeeper for such merchandise?

Hearing Officer: Just a minute.

If your question is: Were you mistaken, Mr. Price—

Mr. Rosenberg: Aren't you mistaken, Mr. Price? Isn't it a fact that you also place the price in those ads in that paper, is my question, or magazine or [997] publication.

Hearing Officer: Do you object?

*Kenneth Price—for Employer—Cross*

Do you object to the question?

Are you—

Mr. Held: Objection. I withdraw the objection.

The question is, I assume: Is he mistaken; right?

Hearing Officer: Right.

Mr. Held: Okay.

I withdraw the objection.

Hearing Officer: Answer the question.

The Witness: The question is limited now to am I mistaken?

Hearing Officer: That's right.

Q. (By Mr. Rosenberg) Yes. A. I'm not mistaken because I'm talking about all advertising that goes into that paper.

Q. But many of the ads placed in that paper set forth the price; right?

Mr. Held: Again, I object.

Hearing Officer: Well, now he's asking—

Mr. Held: He's using the word "many."

Mr. Rosenberg: Many means more than half.

Hearing Officer: It doesn't, but if that's your definition, then he can answer the question with [998] that definition in mind.

Q. More than half of the ads contain the price, do they not? A. I can't answer the question.

Q. Now, isn't it a fact that when your company runs a promotional sale or a promotional sale—I withdraw that.

Isn't it a fact that whenever a promotional sale is run in that publication in connection with the products sold by

*Kenneth Price—for Employer—Cross*

these distributors acquired through your company, that such ads contain the price during such promotional sale to the storekeeper or customer? A. To the best of my knowledge, I'd say yes.

Q. They do? A. To the best of my knowledge, sir.

Q. I show you this paper and I ask you whether you can identify this ad (handing). A. Yes.

Q. Will you tell us, please, what is that and where was it placed? A. It's an ad that was placed in the Modern Grocer, May 12, 1971.

Q. Does that ad cover the products sold by your company through distributors, to both independent and chain store distributors? [999] A. Yes, it does.

Q. And does it show the prices to the storekeeper of such products, the prices to the customers? A. Yes.

Q. What's your answer?

Hearing Officer: Your answer, Mr. Price.

A. The answer is that it shows a temporary price reduction on the items that are advertised here.

Q. All right.

Mr. Rosenberg: I offer it in evidence.

Mr. Held: May I?

Hearing Officer: I just want to ask one question just for clarity if this becomes an exhibit.

The temporary price reduction that you just mentioned, Mr. Price, I assume refers to the letters, the TPR that appear—

The Witness: That's right.

Hearing Officer: —several times on this page?



*Kenneth Price—for Employer—Cross*

The Witness: That's right.

Hearing Officer: All right.

Here, Mr. Held (handing).

Mr. Held: May I have a voir dire on this?

Hearing Officer: Yes.

[1000] *Voir Dire Examination*

Q. (By Mr. Held) On this advertisement, is there anywhere placed the price charged to the store, to the retailer, by the distributor, the amount that would be charged to the customer?

Does that appear anywhere on that?

Mr. Rosenberg: I object to the form of the question. He used the word "retailer." Nowhere in there is that word explained.

Hearing Officer: The customer of the distributor?

Mr. Rosenberg: I don't object to that.

He used the word "retailer."

I don't object to your question.

Mr. Held: Fine.

Q. Does the cost to the customer of the distributor of the products advertised there appear anywhere on that ad?

A. Nowhere.

Mr. Held: I have no objection.

Hearing Officer: There being no objection, it is received as Petitioner's Exhibit 19 in evidence.

(Document above-referred to was marked Petitioner's Exhibit 19 in evidence.)

*Kenneth Price—for Employer—Cross*

Q. (By Mr. Rosenberg) Will you explain, please, looking at this exhibit, the left-hand top corner of [1001] "Old London, 27 dozen, TPR on 39 cent packages."

Will you explain that, please? What does that mean?

A. I think it is self-evident what it means.

Q. Well, just tell us what it means.

Hearing Officer: Please explain it.

The Witness: All right.

A. That 27 cents a dozen is a temporary price reduction on 39-cent packages.

Q. Now, sir, does it mean that a dozen packages of 39-cent packages is sold for a total of 27 cents? A. Does it mean what?

Q. What does 27 cents a dozen mean?

Does it mean that this is what the storekeeper is to pay, 27 cents a dozen? A. 27 cents a dozen is the temporary price—

Q. To be paid by the storekeeper; right? A. 27 cents dozen is a temporary price reduction on 39-cent packages.

Q. Please tell me, who pays 27 cents for a dozen packages? A. Nobody pays 27 cents a dozen packages.

Q. Then what does 27 cents a dozen mean? A. 27 cents a dozen is a temporary price reduction on a dozen of the 39-cent packages.

[1002] Q. Who pays 27 cents for a dozen? A. Whoever buys it.

Nobody pays 27 cents for a dozen.

Hearing Officer: Off the record, please.

(Discussion off the record.)

*Kenneth Price—for Employer—Cross*

Hearing Officer: Back on the record.

In an off-the record discussion, we attempted to clarify what seemed to be some confusion about the exact meaning of the phraseology on this advertisement, which is, I am sure, perfectly clear to the trade reader who reads it.

But for the sake of the reader of the record and all of us here, when the—let's take the quote, 27 cents a Doz, meaning dozen, TPR, Temporary price reduction, on 39-cent packages. The 39 cents in that quotation refers to the retail price that you or I might pay if we walked in off the street and bought this package from the grocery.

Mr. Price, is that correct?

The Witness: That's correct.

Hearing Officer: Okay.

Then the 27 cents a dozen temporary price reduction is a 27-cent reduction in the price of a dozen of these 39-cent packages.

The Witness: At whatever cost per dozen it is.

\* \* \* \* \*

Hearing Officer: Does anybody besides Fairchester [1030] Snacks, Lorenz Schneider, Yorkshire Food Sales Corporation and National Foods—does anybody other than the companies that I just named, advertise Wise Potato Chips in the Modern Grocer in the New York area?

The Witness: Not to my knowledge.

National Foods is a Jersey outfit.

Hearing Officer: New York metropolitan area?

*Kenneth Price—for Employer—Cross*

The Witness: New Jersey outfit.

Hearing Officer: All right.

Q. Now, sir, in addition to Modern Grocer, what other publications does your company advertise the temporary price reductions of some cents a dozen on either sold by it through distributors during a sale or promotional sale? A. There was a time they did in Grocer Graphic, but I don't even know if that exists any more.

Apart from that, I don't know of any others.

Q. There's no question in your mind that the distributors have nothing to do with these temporary price reductions and in arranging them; isn't that so? A. No question in my mind.

Q. That's the question. A. No.

Q. They don't have anything to do with these promotional sales and temporary price reductions, do they? [1031]

A. Not with setting them, no.

\* \* \* \* \*

[1065]

Is that addressed to all distributors, including [1066] the chain store distributors? A. You say is it addressed to them?

Mr. Rosenberg: Repeat the question to the witness, please.

(Whereupon, the pending question was read by the reporter.)

A. The only answer I could give you is what's on the memo, Lorenz Schneider distributors.



*Kenneth Price—for Employer—Cross*

Q. Now, the distributors of Lorenz Schneider includes chain store distributors and independent store distributors, does it not? A. Yes, sir, they do.

Q. All right.

Now, I call your attention to the white sheet, the second sheet of that exhibit marked "feature this favorite four-some," et cetera, in three colors: White, blue and black.

Would you explain, please, what is that? A. This is a hand-out—or, this is a paper that is received by the distributors from the sales department.

It is received first from the Wise Company by Lorenz Schneider Company and then I know they are put out on the tables out in the sales room.

Q. What's the purpose of these things? A. For the fellows to pick them up and take them [1067] with them.

Q. What do you mean take them with them; to take them home and pile them up in their garages or do something with them? A. They are supposed to take them out to the stores and show them to the storekeepers, I suppose.

Q. I see.

Are enough of those white sheets in three colors, in blue, black and white, as we have just indicated, put out for the distributors so they should have at least one for each of the stores on their route? A. I couldn't answer the question.

Q. Well, many are put out, many more distributors, isn't that so? A. Many more distributors?

Q. Yes. A. I believe so, yes.

Q. They are put out in big bundles on the table in the book-up room or the write-up room; is that correct? A. Yes, sir.

*Kenneth Price—for Employer—Cross*

Q. And they are put there by Lorenz Schneider Company; is that right? A. Right.

[1068] Q. Does this refer to a price reduction for all of the stores on each of the distributor routes? A. Yes, it does, a temporary price reduction.

Q. And does it set forth exactly what the temporary price reduction to the storekeeper shall be? A. Yes.

Q. And on this exhibit, what is it? A. 50 cents on a dozen of the 43-cent packages.

Q. Is this also the design of advertisement placed in any trade publication or elsewhere by either your company or the Wise Potato Chip Company in connection with this sales promotion? A. I don't know.

Q. I see.

I now show you some papers stapled together dated February 8th on the first two sheets and February 29th—no, I'm sorry, I stand corrected—I withdraw that.

I show you a sheet marked February 8th, 1972, produced by your lawyer and I ask you whether this represents a memo to the distributors of your company on or about February 8th, 1972.

(Document handed to witness.)

A. You said addressed to the distributors?

\* \* \* \* \*

[1126]

\* \* \* \* \*

A. I would say that they prevent the same temporary price reduction as shown here.

Q. Then it would be correct to say that these sales promotional reductions are made available to chain stores and all other customers of distributors who read the "Modern

*Kenneth Price—for Employer—Cross*

Grocer" or other publications in which the company advertises; isn't that so? A. That's so.

Q. The answer is yes? A. Yes.

Mr. Rosenberg: May I have a short recess?

Hearing Officer: Sure.

(Short recess taken at 2:25 p.m.)

Hearing Officer: Back on the record.

Q. Now, did you, Mr. Price, write to any of the distributors by mimeographed letter, informing them of new arrangements you were making as to warehouse and service charges?

Mr. Held: Can we just get an approximation of the time?

Mr. Rosenberg: Sure, December 4, 1969, and thereafter, the substance of which letter indicated that effective Friday, December 19th and each and every Friday thereafter, all warehouse and service [1127] charges must be made in advance for the following week and so on.

\* \* \* \* \*

[1137] Mr. Held: Why did you characterize it?

Mr. Rosenberg: I didn't characterize it and I don't intend to characterize it.

The witness' testimony speaks for itself.

My question to him is:

Isn't it a fact that your company presently accepts the return of goods from the distributors in the New

*Kenneth Price—for Employer—Cross*

Hyde Park warehouse where the goods are in good condition and result from an over-ordering by the distributor?

A. Not to my knowledge.

Q. No such thing? A. Not to my knowledge.

Q. I see.

How about "We have arranged"—no.

"Did your company arrange that the ten-cent charge will be a year-round cost?"

Mr. Held: I object.

Q. And also that there will be no sur-charges at holiday times such as Decoration Day, July 4th, Labor Day, Christmas and New Year's; do you have any policy about that?

Mr. Held: I object.

Mr. Rosenberg is tossing out a ten-cent charge.

There has been no testimony—I don't know [1138] where he has received these figures from.

But until we have some testimony in the record that there is a charge, and a charge for what, the question just can't be answered.

Hearing Officer: Mr. Price, you have testified that, to your knowledge, the company has no policy of receiving over-ordered merchandise, receiving back over-ordered merchandise, is that correct?

The Witness: The policy is that we don't receive back over-ordered merchandise, that's the policy of the company.



*Kenneth Price—for Employer—Cross*

Now, if exceptions have been made, it's possible that I don't know about them, or promotions or something.

The policy is that there should be a ten-cent charge when merchandise is received back, good returns.

Hearing Officer: Okay.

Let's see if I understand, then, your testimony.

Mr. Rosenberg: Why don't you ask that the answer be read back to you to see if you understood it?

Hearing Officer: Let me see if I understand what you are saying.

You're saying that the policy is not to accept over-ordered merchandise back; is that correct?

The Witness: Yes.

Hearing Officer: But you will accept it for [1139] a ten-cent per carton or per case fee?

The Witness: This is the policy, yes.

Hearing Officer: Okay.

Are we clear?

Mr. Held: Fine.

The Witness: Now, whether there are exceptions at times of promotions or holidays, there may be.

I don't know about that.

\* \* \* \* \*

[1192]

Mr. Rosenberg: I have no further questions, Mr. Kendellen.

Hearing Officer: Mr. Held, are you prepared to begin with redirect?

Mr. Held: Sure.

Hearing Officer: Go ahead.

*Kenneth Price—for Employer—Redirect**Redirect Examination by Mr. Held:*

Q. Mr. Price, taking first the chain stores— A. Right.

Q. —who establishes the prices to be charged to the customers of the distributors for the product? A. The manufacturers.

Q. Who communicates these prices to the customers of the distributors? A. The manufacturers.

Q. Does Lorenz Schneider have any part in the establishment of these prices? A. No.

Q. Now on cross examination we went through authorized items permitted to be sold in the chain stores.

Who determines which items are authorized [1193] to be sold to the chain stores? A. The chain stores themselves, their buying office.

\* \* \* \* \*

[1214]

Q. Does Lorenz Schneider notify the customers of the distributors who operate independent routes, informing these customers of the prices that will be charged to them for the products that are distributed through [1215] Lorenz Schneider by the independent distributors? A. No.

Q. Do the independent distributors—strike that.

Do the distributors vary the prices charged to the customer from those established by the manufacturer?

Mr. Rosenberg: Objection.

He would not know and he would not be qualified and it would be hearsay.

Mr. Held: If he doesn't know, he will say he doesn't know.

Mr. Rosenberg: Just a moment.

*Kenneth Price—for Employer—Redirect*

He cannot testify to hearsay, whether he thinks he knows or doesn't think he knows.

Hearing Officer: Is your question directed to the independent stores, first of all?

Mr. Held: Independent stores, solely.

Hearing Officer: Mr. Rosenberg, you feel that Mr. Price cannot be in a position to answer that question and for that reason he should not be asked the question?

Mr. Rosenberg: I'm sorry, I didn't hear that.

Would you repeat that?

Hearing Officer: All right.

[1216] You said your objection is that Mr. Price cannot be in a position to answer that question?

Mr. Rosenberg: That is correct. It would be hearsay on his part as to what each distributor does or does not do.

Hearing Officer: Well, I think we will judge that as we proceed, if it is necessary to strike any answers if they show that they are clearly hearsay.

So you can answer that question, Mr. Price.

The Witness: The question is when the independent distributor sells to his accounts, do the prices ever vary? Is that the question, sir?

Hearing Officer: Vary from.

*By Mr. Held:*

Q. The question is may he vary from the prices established by the manufacturer?

*Kenneth Price—for Employer—Redirect*

Mr. Rosenberg: That again calls for a conclusion.  
That was not his question before, either.

Mr. Held: I am quite willing to have that question  
answered, the earlier question.

Hearing Officer: Mr. Reporter, please.

[1217] (Record read by the reporter.)

A. Yes.

Mr. Rosenberg: Just a moment.

Before you answer, I objected to the question.

Did you overrule it?

Hearing Officer: Yes.

Mr. Rosenberg: All right.

*By Mr. Held:*

Q. Will you answer it, please? A. Yes.

Mr. Held: May I take a short break at this point?

Hearing Officer: We will take a short recess at  
this point.

(Whereupon, a short recess was taken.)

Hearing Officer: Back on the record.

Read back the last question, Mr. Reporter, please.

(Record read by reporter.)

Q. Has the company, Lorenz Schneider, ever notified  
a distributor that he may not vary the prices charged to  
the independent stores, as established by the manufacturer?



*Kenneth Price—for Employer—Redirect*

Mr. Rosenberg: Objection.

He would not know what anybody else in the [1218] company would say and could say.

He is now being asked to make a blanket statement for everybody in the company.

Mr. Held: I withdraw that question.

Q. Is it company policy to inform these distributors that they may not vary the prices charged to the independent stores, as that established by the manufacturer? A. No.

Q. Who establishes the prices charged by Lorenz Schneider to the manufacturer?

Mr. Rosenberg: I object.

Hearing Officer: Read it back.

(Question read by reporter.)

Mr. Held: I withdraw the question.

Q. Who establishes the prices for the goods purchased by Lorenz Schneider? A. Who establishes the prices for the goods purchased by Lorenz Schneider?

Q. Yes. A. The manufacturer.

Q. Is that price subject to negotiation? A. No.

Hearing Officer: I'm sorry; I have trouble with that last question. I don't know if "negotiation" is a precise enough word to let that [1219] question and answer sit by itself.

\* \* \* \* \*

*Kenneth Price—for Employer—Redirect*

[1229] *By Mr. Held:*

Q. Mr. Price, did you testify that the company has an opening time for the garage at its location in New Hyde Park? A. Yes, sir; I did.

Q. May—strike that.

Is there—

Does the company—

Has the company established any time by which these distributors must report in the morning? A. No.

Q. May they come to remove the trucks at any time after the garage is opened? A. Yes.

Q. Has the company supplied the distributors—supplied those distributors who rent trucks, with name tags to be placed alongside of their trucks?

Mr. Rosenberg: Say that again?

Mr. Held: Read it back, please.

(Record read by reporter.)

Hearing Officer: Do you understand the question?

The Witness: Yes.

The Lorenz Schneider Company didn't, the Schneider Truck Company did.

\* \* \* \* \*

[1231]

Hearing Officer: Objection. Fine.

*By Mr. Held:*

Q. Did you testify relating to incidents about distributors being thrown out of a stop?

*Kenneth Price—for Employer—Redirect*

Hearing Officer: Any objection?

Mr. Rosenberg: No objection.

A. Yes, I testified to the fact that there are times when men have been thrown out of stops.

Q. Would you please explain what you meant by that phrase "being thrown out of a stop"? A. Yes.

In our company when you hear the terminology that a man was "thrown out of a stop," it applies to the fact that something went wrong, whether it was the fault of the man or otherwise, that the storekeeper or manager or company threw the man out of the stop; in other words, that he refuses to allow the man to service the stop.

Hearing Officer: When you used the word "company" in that answer, Mr. Price, you were not referring to Lorenz Schneider, you were referring to the chain store company or something of this sort?

The Witness: Well, I was referring—I know they do, too, but I was referring to Lorenz [1232] Schneider Company when we talk about someone being thrown out of a stop.

*By Mr. Held:*

Q. What is the company policy on service of such a store?

A. Could you explain that just a little more?

Q. Well, a man is thrown out of a stop.

Mr. Rosenberg: I object to explanations.

I have no objections to questions. If the witness doesn't understand the question, and counsel wants

*Kenneth Price—for Employer—Redirect*

to ask it or a similar question or another question, it may not be objectionable.

*By Mr. Held:*

Q. If a man is thrown—

Mr. Rosenberg: I object to any question starting with the word "If."

Hearing Officer: Mr. Price, you testified that you meant by "thrown out of a stop," that whether through the distributor's fault or not, you meant the distributor was not allowed to service the store by the gentleman in the store who had control over whether he serviced it or not.

And then you indicated you did not understand Mr. Held's question concerning—Mr. Held's [1233] next question.

If such a stop exists that he has been—in which an individual as you have just described, a distributor, as you have just described, has been thrown out, does the company follow any procedure concerning the servicing of that stop?

My— Any objections to that question?

Mr. Held: It is fine with me.

Hearing Officer: Mr. Rosenberg?

Mr. Rosenberg: No, no objection to your question.

Hearing Officer: Mr. Held?

Mr. Held: No, no objection.

Hearing Officer: Mr. Price, can you answer that question?

The Witness: Whether the man that was thrown out of the stop, or the distributor was thrown out



*Kenneth Price—for Employer—Redirect*

of the stop, reports it, or whether the storekeeper calls up to report it, a company representative will sometimes go with the distributor if he requests it or, if he does not, and the store manager or owner requests that the company send a representative down that they want to talk to them, they will go to the store and do whatever they can—they'll talk the whole thing [1234] over, go over it with the store and with the distributor himself.

In most cases they get the two of them—they have the two of them together and they try to get an understanding on it, and in most cases the man's right back in the store again.

Hearing Officer: Suppose, though, Mr. Price, that after the company has exhausted every effort and the distributor is still thrown out of the stop, does the company have any procedure that it follows for servicing that store?

The Witness: There have been times when arrangements have been made between two distributors to—

Mr. Resenberg: He is not answering your question.

Hearing Officer: It is precedent to a full answer to the question, so I will allow it.

The Witness: Two distributors have exchanged the accounts, an account of like value, in order to work the thing out together.

There have been times when a distributor hasn't gotten back in and he has sold the account to someone else.

*Kenneth Price—for Employer—Redirect*

But in practically all cases, the original [1235] distributor is back in the account.

Hearing Officer: We are talking only now of cases where the original distributor is not back in the account.

In those cases, however few they may be, I—you stated that at least two things might happen.

Either the original distributor would trade with another distributor; secondly, the original distributor would sell to another distributor that stop?

The Witness: Yes, sir.

Hearing Officer: Are there any other alternatives—have any other courses of action been followed when a distributor has been thrown out of a stop?

The Witness: There is no record of where it hasn't been settled in one of these manners that I referred to.

Hearing Officer: What you are saying to me now is that, to the best of your knowledge, the only thing that has ever happened has been that the distributor has sold it to another distributor or he's traded with another distributor, exchanged it?

The Witness: Or got back in the store.

[1236] Hearing Officer: Right.

We are talking only now about distributors who have been thrown out, who are out period and can't get back in.

The Witness: Right.

Hearing Officer: As far as you know, only two things have happened under those circumstances, he either sold the stop or he exchanges the stop; is that correct?

*Kenneth Price—for Employer—Redirect*

The Witness: Yes.

Hearing Officer: Okay.

With that as background, can you answer, then, to the best extent of your knowledge, whether the company has any procedure that it follows for a distributor who has been thrown out of a store after the company has exhausted its efforts to get the distributor back into the store?

The Witness: Well, as I say, there has never been a case of that.

Hearing Officer: Do you want to proceed any further?

Mr. Held: That's fine with me.

Do you want to go to lunch?

Hearing Officer: Do you have any preference, Mr. Rosenberg?

\* \* \* \* \*

[1244] That he should go out and see Mr. Suba and get these papers and continue to get everything set up and that we would make arrangements for the sale of his route.

Q. Did the company require Mr. Stockton to sell his route?

Mr. Rosenberg: I didn't hear your question.

Did the company—What's the word after that?

Mr. Held: Require.

Mr. Rosenberg: All right.

Q. —Mr. Stockton to sell his route? A. No.

*Kenneth Price—for Employer—Redirect*

Q. Has the company ever, since the inception of the independent distributorships, forced—strike that word—required any distributor to sell his route? A. No.

Q. Has the company ever rejected any potential purchaser of a route? A. No.

Q. Mr. Price, did you testify on cross examination about rebates offered to chain stores? A. I believe I did.

Q. Who established the amount of the rebate [1245] that is offered to chain stores, if you know?

\* \* \* \* \*

[1248] But the record speaks very clearly about it.

Mr. Held: It is not sworn testimony, either.

Anytime he is willing to get up there and testify—

Hearing Officer: The reader of the record knows what is testimony and what is argument.

Mr. Rosenberg: Right.

I withdraw the objection for the purpose of expediency.

Mr. Held: For expeditious handling of the proceedings?

Mr. Rosenberg: Either way.

Mr. Held: May we have the question read, for my benefit and whoever else may need it?

Hearing Officer: Yes.

Question, please.

(Record read by reporter.)

A. The Manufacturer.

Q. Were chain stores granted rebates prior to 1967, if you know? A. Yes.



*Kenneth Price—for Employer—Redirect*

Q. Are independent stores offered rebates? A. Yes.

Q. Is a distributor of an independent store [1249] required to grant a rebate to that store?

Mr. Rosenberg: Let me hear that question again, please?

Hearing Officer: Mr. Reporter, please.

(Record read by reporter.)

Mr. Rosenberg: Required?

Mr. Held: That's my question.

A. No.

Mr. Rosenberg: All right.

*By Mr. Held:*

Q. Do you know whether there are distributors who do not grant rebates to independent stores? A. I understand—I understand that some of them don't.

Mr. Rosenberg: I object to that.

May I ask that the answer be stricken as not responsive?

Also, it is objectionable because he is telling you of an understanding, not of knowledge.

Hearing Officer: I understand the second objection; I don't understand the first.

Mr. Rosenberg: What's the difference? If one is good, that's sufficient.

*Kenneth Price—for Employer—Redirect*

Hearing Officer: I said I understood it, I did not say it had any merits.

(Laughter.)

[1250] Hearing Officer: Mr. Price, on what basis do you have this understanding?

The Witness: I have been told by the general sales manager.

Hearing Officer: That's Suba?

The Witness: Yes.

He is—He has had several complaints from storekeepers that the independent route salesmen, independent distributors, are not paying their rebates.

Mr. Rosenberg: Did you say—Rather than characterize it, I would like to have it read back, please.

Hearing Officer: Okay.

Read it, please.

(Record read by reporter.)

Hearing Officer: In that context, Mr. Rosenberg, do you still object?

Mr. Rosenberg: No.

Hearing Officer: Do you still want it stricken?

Mr. Rosenberg: No. I like it.

Hearing Officer: All right.

Go ahead, Mr. Held.

*By Mr. Held:*

Q. Do you know whether any independent stores [1251] have required of Lorenz Schneider as to their allowance of a rebate? A. Again, I repeat, I have been told by Mr.

*Kenneth Price—for Employer—Redirect*

Suba that this has happened on several occasions where the stores call up.

Q. And what is the company policy in responding to such inquiries? A. They would talk to the independent distributors and tell him that the customer has called up and he is complaining. That's as much as they can do.

Mr. Rosenberg: I move that the latter part of the answer be stricken as not responsive, and self-serving.

Hearing Officer: I will strike it as non-responsive, the reference to that's all they can do.

Go ahead. f

*By Mr. Held:*

Q. Does the company require—is it company policy to require the distributors to grant rebate after request has been made by an independent store? A. No.

Q. I didn't hear your answer. A. No.

\* \* \* \*

[1254] Mr. Held: That's my question, Mr. Rosenberg.

Hearing Officer: Any objection, Mr. Rosenberg?

Mr. Rosenberg: No objection.

A. They ask that they do; they don't definitely require it.

Q. Mr. Price, would you please describe the job duties prior to 1967 of the supervisors of the then route salesmen? A. The supervisors of the route salesmen, they were

*Kenneth Price—for Employer—Redirect*

assigned to certain groups of men and they were completely responsible for the men, for their activities on the route.

They went through the books with the man, checking out distribution—that's route books—and rode with the men on their routes.

They would come in in the afternoon and say, "Joe, I'll be riding with you tomorrow."

He may ride with him a day, a week or whatever at a time. He would help him out; work with him; try to develop the route as he worked along with him on the route.

He would try for better displays and so forth.

[1255] He would come in at night and write up reports on the men and keep records on the route as to what they were doing and what the increases were in sales and so forth.

Q. Mr. Price, if you know, do any of the present distributors— A. I can't hear you.

Q. If you know, Mr. Price, do any of the present distributors who own their own trucks and have leased with the company to leave them over night in the company's premises, have trucks that are in excess of 14 feet? A. The body?

Q. Yes, the body of the truck. A. None.

Mr. Rosenberg: May I ask that question and answer be read back again, please?

Hearing Officer: Mr. Reporter.

(Record read by reporter.)

Hearing Officer: Off the record.

(Discussion off the record.)



*Kenneth Price—for Employer—Redirect*

Hearing Officer: Back on the record.

Any objection?

Mr. Rosenberg: No objection.

Hearing Officer: The answer is what, Mr. Price?

The Witness: None.

\* \* \* \* \*

[1261] *By Mr. Held:*

Q. And from whom do the chain stores receive—by whom are the chain stores told the amount that they will be charged? A. The manufacturer.

Q. Is that amount, therefore, the charge, as forwarded by the manufacturer, less whatever is placed on that ad, for the chain stores? A. Yes.

Q. And for the independents, the price established by the distributor less the amount specified in the ad? A. Yes.

Q. I see.

Hearing Officer: We will take a brief three or four minutes recess.

(Whereupon, a short recess was taken.)

Hearing Officer: Back on the record.

Please proceed, Mr. Held.

*By Mr. Held:*

Q. Mr. Price, who establishes the temporary price reductions—

Mr. Rosenberg: I object to that.

We have been over that sometimes. I can testify—

*Kenneth Price—for Employer—Recross*

not testify. I can give the same answers we are going to get because we got them three times already.

[1262] Mr. Held: Anytime you're ready to get on the stand, Mr. Rosenberg—

Hearing Officer: Are you going to pursue this much further, Mr. Held?

Mr. Held: No. At the most I will have one additional question on it.

Hearing Officer: Proceed.

Mr. Rosenberg: I will withdraw the objection, then.

Hearing Officer: Go ahead.

A. The manufacturer does.

Q. Does Lorenz Schneider discuss the temporary price reductions prior to their institution by Wise?

I withdraw that question.

Does Wise consult with Lorenz Schneider prior to institution of temporary price reductions? A. No.

Q. Mr. Price, I show you Petitioner's Exhibit 20" (handing). A. Yes, sir.

Q. Do you recognize it? A. Yes, sir; I do.

Q. Is this a memorandum by Lorenz Schneider to Lorenz Schneider distributors and sales promotional men?

\* \* \* \* \*

[1270]

*Recross Examination:*

Q. Would you distinguish what you mean between [1271] presenting with a product and never going with them otherwise?

What do you mean by that? A. That they go into the chain store office with the Wise representative while—

*Kenneth Price—for Employer—Recross*

Q. For what purpose? A. —while a new item, maybe a new item or an item that the chain hasn't been handling; is being presented.

Q. And when it is presented to the chain, doesn't anybody mention a little matter like price, "We will give it to you for five cents a gallon or 15 cents a carload or a quarter for a trainload or a dollar a piece or something like that? A. Well, I'm sure that they would have to mention price.

Q. I see.

Price is mentioned. Okay.

Now, sir, when the price is eventually agreed upon between the manufacturer and the storekeeper, that price is then conveyed to your company; isn't that right? A. By the manufacturer?

Q. Yes. A. Yes.

\* \* \* \* \*

[1274] Mr. Held: Okay; then I don't know what "such requests" are. What requests? The question should reflect what type of requests we are talking about?

Hearing Officer: Would you clarify the record?

Mr. Rosenberg: All right.

*By Mr. Rosenberg:*

Q. We'll give you an opportunity, sir, to think about it as long as you like.

Has your company received any requests from customers of the distributors, other than chains, as to the price of your merchandise? A. If you are referring to company— If you are referring to co-ops and associated, would you tell me that?

*Anthony Tomasik—for Employer—Direct*

Q. I'm referring to independent customers, including, not excluding co-ops. A. I'll say with the co-ops and the associateds, that they, too, are notified by the manufacturers of their prices.

Q. Have you received any requests from Quality Delicatessen Stores—that's a group of independent delies, part of a group or an association called Quality Delies?

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[1424] ANTHONY TOMASIK—Direct

Mr. Rosenberg: Can I have that answer repeated. The question and the answer?

(Record read by reporter.)

Q. I show you Company's Exhibit No. 9.

Do you recognize this? A. Yes. This is the order form that is placed by the distributors for merchandise.

Q. Does your department receive copies of this order form? A. These order forms are processed daily to distributors who placed their orders for purchasing their merchandise from the company. They list the quantities that they want for their customers, or that they will sell under the blank which states "order". The consensus, the form consensus of four parts, and it is—

Mr. Rosenberg: Just a moment.

I would object to that. The form speaks for itself. It is in evidence. There is nothing in the form that need be explained by this witness, if it already appears there.



*Anthony Tomasik—for Employer—Direct*

Q. How often do the routemen fill out this form? A. The routemen fill this form out daily, for their orders, and this is done at the New Hyde Park warehouse.

May I add to that, at this point?

There are other distributors who are not located at New Hyde Park and they place their orders directly from [1425] their warehouse.

Q. When you say "directly", directly to who? A. Directly to us, to process through the manufacturers, and the merchandise is shipped to them by the manufacturers.

Q. The merchandise is— A. That the—

Q. Is shipped directly to their warehouses? A. That is correct.

Q. Now, as my previous question, does your department receive a copy of this order form? A. Yes. We get a copy of this form after it is completed and received from the warehouse for processing.

Q. What is then done with this order form? A. This order form is then given to the billing clerk who processes the quantities as we have a data processing machine in billing the distributors, and the purchase. This purchase order form is then placed on the billing purchase form, which shows not only quantities but values that are extended and the total amount that is purchased by the distributor daily.

Mr. Rosenberg: May we go off the record for a moment?

Hearing Officer: Right.

Off the record.

(Discussion off the record.)

Hearing Officer: Back on the record.

\* \* \* \* \*

*Anthony Tomasik—for Employer—Direct*

[1446] Q. To your knowledge, has the company ever acquired a distributor of an independent route to make rebate payments to one of his customers prior to consummating the sale?

Mr. Rosenberg: Object to the question.

It calls for a conclusion, and an opinion.

Hearing Officer: To his knowledge, has the company—

Mr. Rosenberg: I will withdraw the objection.

A. To my knowledge, the answer is, no.

Q. Mr. Tomasik, you testified about charge accounts that independent—that distributors of independent routes may have with their customers.

Who is responsible if those charge accounts are not paid?

Mr. Rosenberg: Object to that.

You are referring, now, to rebates, aren't you?

Mr. Held: No, charge accounts.

Mr. Rosenberg: Let me hear the question, again, please.

(Question read.)

A. The distributor is responsible.

Mr. Held: I have no further questions.

Mr. Rosenberg: As I said, you could have stipulated to most of it.

Hearing Officer: Proceed.

\* \* \* \* \*

*Anthony Tomasik—for Employer—Cross*

[1507]

\* \* \* \* \*

*Cross Examination:*

I show you Exhibit, Petitioner's 21, in evidence, which appears to be a merchandising publication by name of Modern Grocer, and I ask you to turn the following pages and examine the same.

Pages 6 and 7, and Page 19. Would you look at them, [1508] please, and tell me, if you know, has those advertisements, Pages 6, 7 and 19, in that exhibit, have they been paid for in part, at least, by Lorenz Schneider Company, Inc.?

\* \* \* \* \*

[1517]

\* \* \* \* \*

Hearing Officer: Well, I think the—for this proceeding to be conducted in an orderly manner, it seems to me that within the very flexible lines of the rules of evidence, and how they affect this proceedings, this non-adversary proceeding, we can let Mr. Rosenberg go ahead at this point. He has, as he noted, not jumped ahead to something that may be a new element of his case. He is questioning Mr. Tomasik on an area that has [1518] been covered to some extent previously, and as you say, for the sake of orderly process of the case, doesn't seem to me entirely inappropriate to explore that area at this point.

Q. (By Mr. Rosenberg) Would you answer the question, please?

Mr. Held: Can the question be repeated, please?

(Question read by reporter.)

*Anthony Tomasik—for Employer—Cross*

A. These advertisements, in this paper, as I observe them, were with our sales and marketing departments with the manufacturer's people, as far as the ad's costs, themselves are concerned, they were paid by the manufacturer.

Q. Were the names—was the name of your company, Lorenz Schneider, Inc. placed on that advertisement with the knowledge and consent of Lorenz Schneider Company, if you know? A. Would you repeat that? I don't follow that.

(Question read.)

A. I don't know that because this is done through the advertising and marketing departments.

Q. Who is the advertising and marketing department of Lorenz Schneider? A. Mr. Zuber, of course, is in the area because he is dealing with them, in sales.

Q. Mr. Zuber is the answer? [1519] A. I couldn't answer that any other way.

\* \* \* \* \*

[1528] Hearing Officer: Right.

Mr. Rosenberg: You heard his alleged explanation.

Hearing Officer: That's correct.

Mr. Rosenberg: I now ask him looking at Exhibit E29, what was the reason the company required each of the customers of this distributor who is selling this route to get a signed paper from each customer stating that he has received his rebate payments.

Mr. Held: That is what was testified to yesterday.

Mr. Rosenberg: I am asking him to explain it.

Hearing Officer: To explain what?

Mr. Rosenberg: I think it's already been answered.



*John Louis—for Petitioner—Direct*

Mr. Rosenberg: You are satisfied that you understood the testimony in that regard.

Hearing Officer: That's correct.

Mr. Rosenberg: Okay.

You, I suppose, sustain the objection on the grounds it is repetitious.

Hearing Officer: That's correct, unless you have further explanation of why—what new information is being—

Mr. Rosenberg: I have a very good explanation.

\* \* \* \* \*

[1572] JOHN LOUIS—Direct

Q. Are you connected with Lorenz Schneider Company in any way? A. Distributor.

Q. I see.

And what type of route do you have, Mr. Louis? Is it an independent route? A. I have a split route, both independent and chain.

Q. Now, sir, when did you become a distributor for Lorenz Schneider Company? A. 1968, October, I believe, or September. Around that area of time.

Q. I see.

Now, I show you this paper, Mr. Louis, and I ask you whether you have ever seen this paper before.

(Document handed to witness.)

A. Yes, I have.

*John Louis—for Petitioner—Cross*

Mr. Rosenberg: Can I have it marked for identification, please, for the purpose of being able to refer to it.

(Document referred to marked Petitioner's Exhibit 36 for identification.)

Q. (By Mr. Rosenberg) The paper you have just identified is the one marked Petitioner's Exhibit 36 for identification, is that right? A. Yes.

\* \* \* \* \*

[1592]

*Cross Examination:*

I made known to Ed Wheeler what the situation was, that he wanted it in the back room, and he in turn told me—I told him that I wasn't refusing to put [1593] it in the back room, that he'd send somebody out—he'd make contact with somebody out—he'd make contact with somebody out in the company to send somebody out to pull it out of the backroom.

Q. Did you object to this offer of aid? A. No.

Q. Mr. Louis, on your—do you file income tax returns? A. Yes, I do.

Q. On these returns in the box, checking off occupation, do you check off self-employed or employee?

Mr. Rosenberg: I object to that.

In the first place, we have a stipulation that we entered into a long time ago that the company makes no withholding tax deductions, et cetera.

They are all in the record.

*John Louis—for Petitioner—Cross*

I don't know why they are being raised and it would cast nothing that hasn't already been agreed to.

Hearing Officer: I don't think this specific question has been stipulated to.

Mr. Rosenberg: If it hasn't been, I don't object to the question.

Hearing Officer: No, I don't think this has.

Mr. Rosenberg: That's if the witness knows what is checked off; if he knows.

[1594] Mr. Held: I asked him if he knows. That was the question.

Hearing Officer: All right.

Mr. Rosenberg: If he knows what happened with the income tax return.

The Witness: Read that again.

Mr. Held: Please repeat the question, Mr. Reporter.

(Whereupon, the pending question was read by the reporter.)

Mr. Rosenberg: I object.

There is no such form in the 1040 form of the income tax of the United States which has a choice of self-employed or the name of employer.

There is no such thing on the 1040 form.

I believe I am familiar with it as anyone in this room.

Mr. Held: I believe you are wrong.

Mr. Rosenberg: I happen to know you are wrong, not think.

Mr. Held: I withdraw the question.

*John Louis—for Petitioner—Redirect—Recross*

Mr. Rosenberg: On page one of the 1040 form—

Hearing Officer: It's withdrawn.

Mr. Rosenberg: All right.

Q. (By Mr. Held) What do you list as your occupation [1595] on your income tax return? A. Snack distributor.

Q. Do you take business deductions? A. Yes.

Mr. Held: I have no further questions.

*Redirect Examination:*

Q. (By Mr. Rosenberg) Do you know what a business deduction is? A. To be honest with you my accountant handles it.

He hands me the sheet when he is finished and I make out a check.

Q. You don't know what a business deduction is from any other deduction, do you? A. No.

Mr. Rosenberg: That's it.

No further questions.

Hearing Officer: Anything further?

Mr. Held: Yes.

*Recross Examination:*

Q. (By Mr. Held) Do you sign these returns? A. Yes, I do.

Q. Do you read the return? A. Not really, no.

Q. Do you know what you are signing when you sign it? [1596] Do you read the statement right above your signature?



*John Louis—for Petitioner—Recross*

Mr. Rosenberg: I object to that.

He signed a contract with this company and didn't know what he was signing either.

Mr. Held: I object to that.

Hearing Officer: Mr. Rosenberg, you are not testifying for Mr. Louis.

Mr. Held: It doesn't say much for some of these men who are represented by your firm.

Mr. Rosenberg: If they were represented by my firm they would have never signed this contract.

You'd be looking and whistling Dixie.

Hearing Officer: All right.

Are you ready to go on with the hearing?

Do you have a question?

Mr. Held: There is an outstanding question, if he read the sentence right above the signature.

Hearing Officer: Are you objecting to the question?

Mr. Rosenberg: I have no objection to the question, if he knows what the sentence is above the signature.

If the witness doesn't know, he will so answer.

I won't object.

Mr. Held: Mr. Rosenberg, I am sure the witness [1597] knows himself, if he doesn't know that, he won't answer.

He needn't have your prompting on that.

Hearing Officer: We all know where we stand.

Go ahead, Mr. Louis.

A. If I know what it says, yes, I read it.

Q. And you signed the return? A. Yes.

*William E. Blatt, Jr.—for Petitioner—Direct*

Mr. Held: No further questions.

Mr. Rosenberg: I have no further questions.

Hearing Officer: Mr. Louis, you are excused.

(Witness excused.)

Mr. Rosenberg: Bill Blatt.

Hearing Officer: Raise your right hand, please.

Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Blatt: I do.

Hearing Officer: Be seated.

State your full name for the record, please.

Mr. Blatt: William E. Blatt, Jr.

Hearing Officer: Your address.

Mr. Blatt: 30 Hudson Drive, Kings Park.

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[1604] WILLIAM E. BLATT, JR.—*Direct*

A. The distributors were—I honestly think were union men who run their routes and then purchased their routes.

Q. No. I said subsequent to that. Listen carefully to the question.

When you first became a trainer, there was a trainer before you, a Mr.— A. Daniels.

Q. —Daniels, right? A. Yes.

Q. He trained men who were hired by the company as employees with—and were members of a union, is that right, or became members of a union? A. No—when Mr.

*William E. Blatt, Jr.—for Petitioner—Direct*

Daniels was the trainer the company already had franchised.

The men come to work for Lorenz Schneider and had the option to stay as a promotional man or buying routes.

Q. Did you train them as promotional men or train them as route men or is it one and the same?

Mr. Held: I object.

This is a conclusion. That's a very point in issue at this hearing.

Hearing Officer: I am not—off the record.

(Discussion off the record.)

Hearing Officer: On the record.

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[1605]

Now, at the time you were first employed—do you recall the year this was?

What year, Mr. Blatt? A. Roughly 1961, 1962.

Q. In 1962, '62, were there any distributors such as you are now? [1606] A. No, sir.

Q. The company did not employ—I withdraw that.

The company did employ route salesmen, did they not? A. Correct.

Q. Now, sir, at the time when you were employed as a promotional man and up to 1967, no matter how you were employed, were there any route salesmen in the company then that are present here today in this room? A. Yes, sir.

Q. Could you name me a few? A. Joe Delprett, Frank Stanaschioss, Warren Klaus.

*William E. Blatt, Jr.—for Petitioner—Cross*

Q. Please start again, Delprett? A. Joe Delprett.

Q. Right. Who else? A. Stanaschioss.

Q. Go ahead. A. Warren Klaus.

Q. Yes? A. Al Erschem.

Q. All Erschem. A. John Smith.

Q. John Smith. Go ahead. A. I think that's it.

I don't know when these other fellows came into the—to work.

[1607] Q. There could be more but these are the ones that you recall right offhand, is that right? A. Yes.

\* \* \* \* \*

[1628] *Cross Examination*

Go ahead, Mr. Blatt. A. Sometimes an individual is slower than others, and the man who would stay on the training period that much longer.

Hearing Officer: The question, Mr. Blatt, was, did anybody—anyone object to the length of the training period?

The Witness: No.

Hearing Officer: Anybody from the company, any one of the individuals.

The Witness: No.

Hearing Officer: No?

The Witness: No.

Q. (By Mr. Held) You purchased a chain route approximately a year and a half ago? A. Correct.

Q. When you made such purchase, did you—from whom did you purchase the route? A. Lorenz Schneider.



*William E. Blatt, Jr.—for Petitioner—Cross*

Q. Can you tell us approximately the cost of that route?

A. Twenty-three, five.

Q. Did you give a down-payment? A. Yes.

Q. Would you reveal to us approximately how much of [1629] a down-payment you gave? A. \$5,000.

\* \* \* \* \*

[1636] Q. What time do you start work? A. In the neighborhood of seven o'clock in the morning.

Q. Which warehouse are you in, Riverhead or New Hyde Park? A. New Hyde Park.

Q. Has the company ever told you that you must start work at a certain time? A. No.

Q. Has the company ever told you that you must work five days a week? A. No.

Q. Do you know whether any of the distributors work less than five days a week? A. The only way I can answer that is some men work on Saturdays, too, if they miss a day during the week.

Q. Does the company require them to work on Saturdays? A. You have to serve your route.

Q. Does the company require them to work on Saturdays?

Mr. Rosenberg: I think he's answered that. He's answered the same question twice.

Hearing Officer: Mr. Blatt, try to be more directly responsive to Mr. Held's question.

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*William E. Blatt, Jr.—for Petitioner—Recross*[1651] *Recross Examination:*

Hearing Officer: He said if there is going to be a long discussion he will withdraw it.

Mr. Held: Yes, he went into this—

Hearing Officer: The objection is overruled. Go ahead.

Mr. Rosenberg: I withdrew it, how can you—

Hearing Officer: Okay. I thought—

Mr. Rosenberg: I said if there is going to be a long discussion I will withdraw it.

There wasn't a long discussion.

Hearing Officer: I didn't know you were withdrawing it. Answer the question, Mr. Blatt.

A. Independent stores where there is no Wise or other manufacturer's product we can solicit.

Q. May you sell off stores to either the company or to another distributor? A. Yes.

Q. Have you? A. No.

Q. You testified that the company makes suggestions to you about the servicing of your route, is that correct? A. Yes.

Q. Do they force you—do they require you to follow these suggestions? [1652] A. No.

Q. Do you know if any potential purchaser of a route was ever rejected by Lorenz Schneider?

Mr. Rosenberg: Say that again, please.

Let me hear that again.

(Whereupon, the pending question was read by the reporter.)

Hearing Officer: Mr. Blatt.

*William E. Blatt, Jr.—for Petitioner—Recross*

A. I know of a case where a route was for sale and because of a down-payment the man couldn't sell his route.

Hearing Officer: I don't understand your response, Mr. Blatt.

The Witness: A man in this room had his route for sale—

Hearing Officer: Right.

The Witness: —and because of the down-payment on the route the man couldn't sell the route.

Hearing Officer: I don't understand. You mean the down-payment was too large or too small?

The Witness: Too small.

Hearing Officer: Because the down-payment was too small the man couldn't sell his route, that is your testimony?

The Witness: Yes.

\* \* \* \* \*

[1654] The company finances the routes. We pay our mortgage to the company.

Hearing Officer: Right.

The Witness: And through something with the down payment it didn't go through.

Hearing Officer: You mean through the company?

The Witness: Yes.

Mr. Rosenberg: The company—the down-payment was too small for them to finance it.

Mr. Held: You don't have to testify, Mr. Rosenberg.

Mr. Rosenberg: I don't know why you are laboring it.

*William E. Blatt, Jr.—for Petitioner—Redirect*

He is not a lawyer.

Hearing Officer: We'd like him to tell us the information he gained.

Mr. Rosenberg: It's clear as a bell to me.

I don't know why you are having difficulty with it.

Hearing Officer: Whatever the reason may be we're having difficulty with it, it is not very important.

Okay.

The Witness: As far as I know that's it.

Hearing Officer: Okay.

Q. (By Mr. Held) Mr. Blatt, did you testify that your DR man named Mr. Deegan spoke to you about prices on a display in the Shop Rite store in North Bellmore? [1655]

A. That's correct.

Q. What did he say to you? A. He asked me why there wasn't a sales price put on the display.

Q. And what did you respond? A. I told him if he could put one on, more power to him.

Q. Did you ever put any on? A. I was told not to put one on by the manager of the store.

Q. Did you ever put it on? A. I was told not to put it on.

Q. So therefore you never put it on? A. That's right.

Mr. Held: I have no further questions.

*Redirect Examination:*

Q. (By Mr. Rosenberg) Did the DR man ask you to speak to the manager about putting the prices on the merchandise during the same— A. Yes.



*Fred Mockel—for Petitioner—Direct*

Q. He checked the store before speaking to you about the prices not being on it?

Did he tell you that he checked the store before speaking to you? A. He came in and said to me why wasn't there a [1656] price on the display.

[1660]

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## FRED MOCKEL—Direct

Q. Now, how long after you went back on the route did this occur—this occurrence take place, this Friday that you spoke of? A. Well, I'd say a little over a week, about a week or so.

Q. Now, would you tell us what happened that particular Friday? A. Yes.

Well, that Friday I had received a bill from Lorenz Schneider for covering my route for these two weeks.

Q. Did you dispute this bill? A. Yes, I did.

Q. What did you do on Friday in connection with this bill? Did you talk to anybody? A. Yes.

[1661] Q. Where did this conversation take place? A. At Lorenz Schneider.

Q. With whom did it take place? A. Well, it started out with Mr. Dutwhiler and Mr. Blumberg.

I believe Mr. Dutwhiler is the accountant or has to do with the bills, with the money, and Mr. Blumberg is the assistant to Mr. Zuba.

Q. I see.

What did you say and what did they say— A. Well—

Q. —at that time? A. I said I was very dissatisfied with the servicing of my route, many stops were not serviced.

*Fred Mockel—for Petitioner—Direct*

I felt that the bills was way out of order due to this fact, and I refused to pay this amount.

I was told then there was no choice in the matter, and I said, well, I will not take my route out until we can discuss this and have a meeting to this effect and settle it.

Q. Did you arrange a conference or a meeting about this matter? A. Yes. On—

Q. When was it arranged for? A. Well, it was arranged with Mr. Belmont at the time.

[1662] Q. Who is he? A. Well, he's—

Q. Is he a company employee? A. Yes, he is.

Q. I see. A. He is usually in charge of selling the routes and so on.

I had a meeting—we arranged a meeting with Mr. Belmont, with Mr. Price, with Mr. Zuba, Mr. Dutwhiler and Mr. Tomasik for the following Monday.

Q. That would be right over that weekend, is that right? A. That's correct.

Q. And this discussion took place on Friday? A. Friday, right.

Q. Did you lease a truck from the company? A. Yes, I did and still do.

Q. And did you pay in advance— A. Yes.

Q. —for the truck? A. Yes.

Q. When did you pay for the forthcoming week? A. That week I had paid. That may be Wednesday or Thursday for the following week.

Q. For the following week— [1663] A. Right.

Q. —is that right? A. Yes.

Q. So that the truck was yours for Friday and Monday— A. That's right.

*Fred Mockel—for Petitioner—Direct*

Q. —under the lease agreement, is that correct? A. Correct.

Q. Now, sir, what time was the meeting arranged for for Monday morning? A. 9:00.

Q. Did you have occasion to discuss this with your brother and these gentlemen all at the same time? A. Yes.

Q. In other words, was your brother present during these discussions? A. Yes.

Q. And where is his route? A. Ridgeway, mostly in Ridgeway.

Q. His is an independent route, as well? A. Also an independent route.

Q. What did your brother say about taking out his route that Friday? A. Well, he also agreed with me, that we will—we would have this meeting before we would take those routes out.

[1664] Q. That Friday? A. That Friday, correct.

Q. I see.

Now, Monday morning were you at the plant or at the offices— A. Yes.

Q. —for this conference? A. Yes.

Q. Did you see the two trucks that you and your brother were leasing? A. Yes, I did.

Q. What did you observe about those trucks? A. They were being loaded by promotional men with additional merchandise being readied to go out on the route.

Q. Now, sir, were your trucks locked in any manner— A. Yes, they were.

Q. —when you left them on Friday? A. Yes, they were.

Q. And how were they locked, sir? A. With padlocks.

*Fred Mockel—for Petitioner—Direct*

Q. And whose padlocks were they? A. Mine and my brother's.

Q. You had a padlock on your truck and your brother had a padlock on his truck? [1665] A. Right.

Q. And who were the only ones who had keys to these padlocks? A. Myself and my brother.

Q. The company had no keys for them? A. No.

Q. And did the truck contain merchandise that you had paid for? A. Yes, it did.

Q. Now, sir, did the route go out on Monday morning? A. Yes, it did.

Q. Did you take the route out? A. No, I didn't.

Q. Did you inquire as to—did you see who took the route out? A. Yes, the promotional men.

Q. Did you discuss this with Mr. Price and the other people there? A. Later on we did, yes.

Q. What were you told? A. Well, we were told the routes were going out. We had no choice in the matter. The routes were going to go out.

Q. In other words, they decided that the routes were going out? [1666] A. Yes, they loaded them with additional merchandise.

Q. Now, did you ask him what happened to the locks, the padlocks that you had on your trucks? A. They were broken.

Q. Who told you that? A. Mr. Blumberg.

Q. Mr. Blumberg said they broke it open? A. Right.

Q. Were your routes taken out? A. They definitely were.

Q. Were your customers serviced? A. Some of them were, yes.

Q. I see.



*Fred Mockel—for Petitioner—Direct*

Was there money collected from the customers for the sale of that merchandise? A. Yes.

Q. Did you see any of that money? A. No, I didn't.

Q. And subsequently you straightened out that disputed bill with the company? A. Yes, we did.

Q. What were you told about this merchandise that was on your truck and shipped out and sold to your customers? [1667] A. Well, it was considered a lost day. We would not be charged and they would keep the money, the profits for the day.

Q. Did they say anything about that being a punishment for you saying that you are not going to take the route out?

Mr. Held: I object.

Q. What did they say about that? A. They just said that the routes were going out whether we liked it or not, that was it.

Hearing Officer: Who is they?

The Witness: Mr. Blumberg. Monday morning—

Hearing Officer: Yes.

The Witness: —Mr. Blumberg was the one who was personally in charge.

Mr. Rosenberg: I have no further questions.

Mr. Held: May I have one moment, please.

Hearing Officer: Surely.

Mr. Rosenberg: While they are thinking, let me ask you one more question.

Q. (By Mr. Rosenberg) Did anybody say with whom they consulted before the broke the locks on your door? A. Well—

*Ken Mulligan—for Petitioner—Direct*

Q. On the trucks? A. Mr. Blumberg had mentioned something about his [1668] lawyers, contacting their lawyers.

Q. That they had called their lawyers before they broke the locks, is that it? A. Yes.

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[1708]

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KEN MULLIGAN—Direct

Q. (By Mr. Rosenberg) Mr. Mulligan, are you a distributor for Lorenz Schneider Company? A. Yes, I am.

Q. What warehouse do you work out of? A. Riverhead.

Q. Now, sir, were you ever given any instructions as to the last—last time that you must pick up— A. Yes, I have.

Q. —your load— A. Yes.

Q. —of merchandise from the company? A. Yes.

Q. How did you receive such notice? A. I was called in the office on—I believe it was a Monday night and they told me I had to be in—

Q. Who is “they”? A. Ed Wheeler called me in. He told me that they had a meeting with Mr. Zuba, Mr. Zuba told him I had to be [1709] in before seven o’clock in the morning to pick up any load.

Q. Otherwise what?

Did they tell you what would be if you didn’t come in there before seven? A. I walked out. I got angry and walked out before he told me but I was told at another time that they will hold my load up and they won’t load me unless I did come in before seven.

Q. Who is “they”? A. Bruce Brown.

*Ken Mulligan—for Petitioner—Cross*

Q. When did this first conversation take place? A. I am not sure.

It happened more than once.

It's going back now. Maybe three weeks, four weeks, a month.

Q. Just in the last month or so? A. No, it happened before—it happened a few times.

Q. When was the last time it happened? A. I am not sure of the date. About two weeks ago.

Q. About two weeks ago? A. Right.

Q. Where did it take place? A. In the warehouse.

[1710] Q. And who was present? A. Just myself and—  
and who is the DR out there—the district supervisor.

Q. You can't remember his name for the moment? A. Yes, it just slipped my mind. Mr. Wheeler.

Q. And when did it happen before that? A. Oh, about—

Q. The time before that. A. Oh, about over a month ago.

Q. Was it Mr. Wheeler again? A. No, that was Bruce Brown.

Q. And how many times in all did it happen? A. I don't know for sure. Three or four times.

Q. How long have you been a distributor? A. I was on probation since November. Then I bought the route—the contract in January.

Q. 1972? A. Right.

Mr. Rosenberg: Your witness.

*Cross Examination:*

Q. (By Mr. Held) Mr. Mulligan, do you own your own truck? A. I own my own truck.

*Ken Mulligan—for Petitioner—Cross*

Q. Do you know what time the warehouse opens in the morning? [1711] A. Six o'clock.

Q. Do you know what time it is opened until? A. Six o'clock.

Q. Could you pick up your load in the evening rather than in the morning? A. It would be very difficult for me at times.

Q. But would the company—would the company allow it? A. Yes, it would.

Q. In other words, you are given your option to pick it up either in the morning or the evening? A. Right.

Q. And if you picked it up in the evening, do you—strike that.

Where do you store your truck? A. In front of my house.

Q. In front of your house? A. Right.

Q. If you picked up your load the prior evening, would you be able to start your deliveries any time you wanted the following morning? A. I would,

Q. And the company, being Lorenz Schneider, does not tell you whether to pick up in the morning or in the evening? A. They suggested that I pick it up in the evening.

[1712] Q. They suggested you pick it up in the evening? A. Yes, and it would be a hardship on me.

Q. Did they allow you—

Mr. Rosenberg: Let him finish.

A. They suggested I pick it up on—in the evening because it causes a lot of trouble to pick it up in the morning but I'd rather pick it up in the evening because I can make more money by staying out later.



*Ken Mulligan—for Petitioner—Redirect*

Mr. Rosenberg: You mean you'd rather pick it up in the morning.

The Witness: I'd rather pick it up then. They don't want me to do it that way.

Q. (By Mr. Held) They gave you the option to pick it up at either time? A. Sometimes they give me the option and sometimes they—I said I couldn't come in before seven. They give me the option, sometimes they don't.

Q. I'm sorry, I don't understand that. A. They say I can come in in the morning but I have to come in at a certain time.

So actually then I can't come in early in the morning.

Q. Then you can pick it up in the evening? A. Right.

Q. Is your route a chain route or an independent route?  
[1713] A. It's both.

Q. Both? A. Right.

Mr. Held: No further questions.

*Redirect Examination:*

Q. (By Mr. Rosenberg) I show you Exhibit P36 in evidence and ask you whether you were given a paper such as that when you acquired your route. A. I was given this.

Q. Were you also given a green book with procedures?  
A. I am not sure.

Q. But you were given this— A. Yes.

Q. —paper? A. Yes.

Mr. Rosenberg: I have no further questions.

Hearing Officer: Thank you, Mr. Mulligan.

(Witness excused.)

*Warren Klaus—for Petitioner—Direct*

WARREN KLAUS—Direct

Mr. Rosenberg: Mr. Warren Klaus.

Hearing Officer: Raise your right hand.

Do you solemnly swear that the testimony that you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

The Witness: I do.

Hearing Officer: State your name and address, [1714] please.

A. Warren Klaus, 43 Ecklin Blvd., Lake Ronkonkoma.

*Direct Examination:*

Q. (By Mr. Rosenberg) Mr. Klaus, how long have you been connected in one way or another with Lorenz Schneider Company? A. Since May of 1958, 14 years.

Q. Now, sir, during those fourteen years, would you please tell us in what capacities were you connected with the company, starting fourteen years ago? A. As a route salesman, up until the time they sold the routes.

Q. You were a route salesman from 1958 to 1967? A. Yes, sir.

Q. During that period of time what kind of a route did you operate? A. I ran an independent route.

Q. Did there come a time—during that period of time did you have any supervisors supervising your work? A. Yes.

Q. Starting with 1958 assuming your memory is good enough, can you give us the name of the supervisor over you in 1958 and thereafter? A. Yes. In Manhattan it was Eddie Zuba.

*Warren Klaus—for Petitioner—Direct*

Q. And he was your supervisor for how long? [1715] A. I think it was in Manhattan three years—three years, I think.

Q. You say Manhattan. What does that have to do with the situation? A. Well, in those days they had supervisors according to divisions.

In other words, they had one that was Manhattan, and Riverhead supervisors, they had three or four down in Brooklyn. They cover districts.

Q. I see.

Where was your route located? A. 145th Street between 4th Avenue and Broadway, upper Harlem and Washington Heights.

Q. And Mr. Zuba was your supervisor? A. Right.

Q. How long did you—was he your supervisor for what period of time? A. Well, really, the three—I believe it was three years that I was in there.

Q. That would take it from 1958 to around 1961? A. That's right.

Q. What happened in 1961? A. I bid on a route down in Rockaway Beach and I received it.

Q. You were changed—you got a new route out of [1716] Manhattan to Rockaway Beach in Queens? A. Right.

Q. Did you also get a new supervisor? A. Yes.

Q. Who was he? A. Joseph Morrielli.

Q. Is he still connected with this company? A. Yes.

Q. What is his capacity? A. I guess in charge of DR's. Riverhead is one of his divisions now.

Q. How long did you say with that route in Rockaway?

A. I guess three or four years.

*Warren Klaus—for Petitioner—Direct*

Then I transferred to Riverhead. I bid on a route out there.

Q. What route was that, sir? A. Well, that was one of the routes that had originally been sold that the union had taken the company to court and was forced into taking back from Bill McNalley, one of the distributors from Yorkshire and when it came out for a bid I bid on it and I received it.

Q. Is that the same route you now have? A. No, sir.

Q. How long were you with that route?

Before you tell us that, you have a new supervisor? [1717]

A. Out in Riverhead?

\* \* \* \* \*

[1720]

Q. Immediately before you signed the paper you told us Mr. Kassman or Kausman, or something like that was your supervisor? A. Right.

Q. Did you see Mr. Kassman after you signed the paper? A. Yes.

Q. What was he called now? A. He was called a distributor's representative.

Q. A DR man? A. Yes.

Q. Will you tell us the duties in connection with you when you were a route salesman up to the time you signed this piece of paper called a contract? [1721] A. Well, amongst other things giving us hands out on the route, riding with us, checking codes, merchandise, et cetera, checking our route books for distribution.

Q. Would you explain what you mean by checking codes?

A. Well, we have a shelf life on merchandise which is strictly adhered to.

In other words, they send somebody out to check it.



*Warren Klaus—for Petitioner—Direct*

If it is out of the code, you know about it.

Q. The code tells you how old the merchandise is? A. Yes.

Q. After the merchandise has been on the shelf, based on the code for a certain period of time, does the company have any policy in regard to that merchandise? A. It is supposed to be removed.

Q. Was it the duty of the supervisors before he became a DR man to check this and other things in the store that you served? A. Yes.

Q. What was the duty of the same man, Mr. Kassman, after you signed this piece of paper they told you was a contract? A. Basically he did the same.

[1722] Q. Same thing? A. Yes.

Q. Did he check your customers? A. Yes.

Q. Do they still check your customers, the DR man? A. Up until the time Rudy has, yes.

The new one hasn't—he's ridden with me twice but—

Q. Did the supervisor, when he was a supervisor, tell you how better to serve the customer and the store for increased sales before you became—

Mr. Held: Mr. Kendellen—

Mr. Rosenberg: Let me finish.

Q. —before you became a distributor?

Mr. Held: I am going to have to object to this whole line.

If he wants to have Mr. Klaus testify as to the job of the DR, fine, but he is going step by step and

*Warren Klaus—for Petitioner—Direct*

listing alleged duties of supervisors and saying is that it, is that it.

If he is going to run through it all the witness should testify to is what his supervisor did with him prior to 1967, not allow Mr. Rosenberg to ask did he do this, do they do this.

This is direct examination.

[1723] Mr. Rosenberg: I asked—

Hearing Officer: I think Mr. Held's objection is that you are leading the witness.

Q. (By Mr. Rosenberg) What were his duties—were his duties any different after he became a DR man and after you acquire the route than before?

Mr. Held: I object.

That leads to a conclusion.

The reader of the record will determine whether they are the same.

Hearing Officer: That is a conclusion, Mr. Rosenberg, that has to be drawn by someone other than the gentleman who is testifying.

Q. Tell us what the DR man does now in connection with your stops.

When I say "now," I mean immediately after you acquired the route, in 1967, up to the time Mr. Kassman left. A. Well, basically he did the same thing he did before he had gone out—

Mr. Held: I object to that answer. I ask that it be stricken.

*Warren Klaus—for Petitioner—Direct*

He should just give what he did. We don't need two conclusions.

Hearing Officer: Mr. Klaus, try to state the [1724] actual duties performed.

A. Well, he'd go out on the truck with us or he would go out in his car and he'd walk into the stores, he'd check our method of our merchandising, our rotation, our sales, he would write up a report, and—

Q. What would he do with the report? A. He would send it to the company.

Q. Was the report shown to you? A. I have seen several of them.

Q. What were his duties before you signed this piece of paper called a contract and gave the company the \$500?

A. He'd get in his car and go out and check our routes, ride with us on the trucks, check our merchandising, check our codes, write out reports.

Q. Did you note any difference between his duties before 1967—

Mr. Held: I object.

Q. —and after 1967?

Mr. Held: I object.

It is a conclusion on the part of the witness, whether he noted any difference.

Hearing Officer: His testimony is not that there were differences.

He has to conclude what it is in order to note [1725] a difference.

*Warren Klaus—for Petitioner—Direct*

The reader of the record may make a decision that doesn't make an ounce of difference what Mr. Klaus noted but Mr. Klaus can testify what he noted.

Go ahead, Mr. Klaus.

A. No, I didn't note any difference.

Q. Was there a difference in the name in which Mr. Kassman was called before 1967 and afterwards? A. Yes.

He was a route supervisor previous and a distributor's representative after.

Q. You were called what before 1967? A. Route salesman.

Q. What are you called now? A. An entrepreneur.

Q. Let's talk about money.

Hearing Officer: What are you called by the company?

The Witness: We are called independent route-independent distributors but that was a little connotation that was brought in at the time we bought the routes.

Q. You mean they told you you were an entrepreneur?  
A. Right.

And any originals would remember that.

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[1739]

Q. Now, sir, you were telling us before you signed this piece of paper you were getting 9 per cent commission?

A. Yes, sir.



*Warren Klaus—for Petitioner—Direct*

Q. What were the gross sales on your route at that time?

A. At the time I purchased it I think it was running pretty close to \$2,000.

Q. What were your earnings? A. \$180 plus.

Q. In addition—over \$180? A. Yes.

Q. You didn't have to pay for a truck, did you? A. No.

Q. Didn't have to pay for the warehouse, did you? A. No.

Q. Didn't have to pay—

Mr. Held: Again he is going through—why doesn't—the question should be what other additional payments did you have, not you didn't have to pay for this, you didn't have to pay for that. It is repetitious, Mr. Rosenberg.

[1740] Q. Did you have any additional payments from the 180 some-odd dollars that you made working for Lorenz Schneider? A. No, sir.

Q. Did you on the other hand have vacation? A. Yes, sir.

Q. How much vacation did you have up to that time? A. Three weeks.

Q. How much do you have now? A. I get two weeks.

Q. Who pays for the vacation? A. I do.

Q. Before who paid for the vacation? A. I got paid from the company.

Q. Did you have sick leave? A. Yes, sir.

Q. Did you have any fringe benefits such as unemployment insurance? A. Yes.

Q. Workmen's compensation? A. Yes, sir.

*Warren Klaus—for Petitioner—Direct*

Q. Retirement or pension? A. Yes.

Q. Welfare payments? A. Yes.

[1741] Q. Holidays? A. Yes.

Q. Do you have any of those things now? A. No, unless I pay for them.

Q. The company gives you none of those things, do they?

A. Unless I pay for them.

\* \* \* \* \*

[1743]

Q. Now, sir, let's come to displays.

Prior to the time you signed this piece of paper and paid them \$500, what were —what about displays and your job or work, can you tell me?

Did you have to put out displays? A. Oh, yes, we put out displays.

Q. Were you required to do that by the company? A. Yes.

Q. Did the supervisor check on the displays put out by you? A. Yes.

Q. After you signed this piece of paper and paid \$500 did the DR man check on the displays put out by you? A. Yes.

Q. Did the company have any policy in regard to racks or other equipment to place the material or [1744] merchandise issued by the company? A. Yes. We have to purchase it.

Q. Now, sir, has the company directed you in any manner in regard to where and how many racks or other merchandise displaying material you are to put out on your route? A. Yes.

*Warren Klaus—for Petitioner—Direct*

Q. Tell us about that, please. A. Well, you'll find some chains, if the display area isn't up to what they feel and they send a contact man out and get a little more space, they will go in there and put the additional shelving in and bill you for it whether you say yes or no.

Q. In other words, you have nothing to say on how much shelving is put out by the company on your customers, is that right? A. Right.

Q. Yet you are billed for them? A. Yes.

Q. To your knowledge has any distributor refused or objected to paying for them? A. Yes.

Q. When did this happen? A. Well, we had one incident not too—

Q. Hold it.

[1745] Would you please answer the question? A. We had an incident not too long ago of a fellow worker out in Riverhead.

They went in and put a couple of hundred dollars worth of shelving in a King Kullen store that didn't warrant it and he refused to pay it and it was over a year or close to two years, I guess, and finally when he went to sell the route they forced him into paying it.

They didn't bother him for two years and he had to settle that account up before he sold it.

Q. What is the name of this distributor? A. Willie Brown.

Q. Now, sir, has the company informed you that certain displays are to be put out in your customers, or any of your customer's stores? A. Yes.

Q. When did this happen? A. We just had a recent pro-

*Warren Klaus—for Petitioner—Cross*

motion that I had a few stores that I was notified that had to get merchandise.

Q. That is merchandise displays you are referring to?

A. Additional merchandise.

\* \* \* \* \*

[1760] Hearing Officer: Mr. Klaus, do you recall if you testified earlier that there were or were not amendments?

The Witness: I believe—I don't know how you understand it, but I believe I said there may have been due to the fact if I can elaborate on this a bit, that all the years I have been out in Riverhead I never attended Owls meetings even though I was a member because it was a matter of traveling in say 30, 40 miles to the meetings.

So I said there may have been is what I meant.

Hearing Officer: All right.

The exhibit is marked as Petitioner's 39.

(Document referred to marked Petitioner's Exhibit 39 for identification.)

Hearing Officer: It is not received and it is placed in the rejected file.

Mr. Rosenberg: Your witness.

*Cross-Examination:*

Q. (By Mr. Held) Mr. Klaus, when you signed the agreement with the company in 1967 in purchasing the route, were you represented by a lawyer? A. Yes.



*Warren Klaus—for Petitioner—Cross*

Q. Prior to your purchase of the route in 1967 you say—your supervisor—did you testify that your [1761] supervisor rode with you? A. On occasions they rode with us, yes.

Q. Was this at your request or at their instigation? A. At their instigation.

Q. Could you estimate approximately how frequently this occurred?

Mr. Rosenberg: This is prior to 1967?

Mr. Held: Prior to 1967.

A. Oh, I'd say roughly two or three times a month.

Q. All right.

And subsequent to 1967, after you signed the agreement and became a distributor, did the DR's ride with you? A. Yes.

Q. Was this at your request? A. No, sir.

They would ask us.

Q. And did you—did you ever turn them down? A. Once or twice.

Q. What occurred? A. The few times I turned them down he got in the car and went around and followed me after—stop by stop.

Q. And he went into each route with you, each stop? A. He went into stores right behind me.

Q. Did he go with you? [1762] A. No, sir.

Q. Did you see him enter the stores after you left? A. Yes, I have had occasions where I have doubled back and I saw them in the stores that I previously left.

Q. You obviously have no idea what they—what was discussed when you went there, do you? A. No.

*Warren Klaus—for Petitioner—Cross*

Q. On the—in Riverhead, after 1967, immediately after the signing of the contract, you leased the trucks—you leased a truck from Schneider Trucks, is that correct? A. Right.

Q. How long a lease did you execute? For what length of time? A. One year.

Q. Was this renewed yearly? A. Yes.

Q. There then came a time, as you testified, that the company representatives held a meeting with the men from Riverhead and set forth prices—future prices of leasing of almost double the amount that was presently being charged, is that correct? A. They didn't set prices. They gave tentative figures at approximately what it would be but it would [1763] be reviewed in the future.

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[1771]

## PROCEEDINGS

Hearing Officer: The hearing will be in order.

Mr. Warren Klaus will resume the stand.

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Whereupon, WARREN KLAUS, having been previously sworn, resumed the stand and testified as follows:

*Cross Examination* (resumed):

Q. (By Mr. Held) Mr. Klaus, prior to signing of the contract which the company deemed made you an independent contractor, were you a route salesman? A. Yes.

Q. When, approximately, did the company first notify you of the option to purchase the route? A. I really don't remember.

*Warren Klaus—for Petitioner—Cross*

Q. Would you know, approximately, how much time there was between when you were first notified of the right to purchase a route, and when you actually purchased the route? A. I would say, about six months.

Q. About six months? A. Yes.

Q. In that intervening period, did you consult a lawyer?  
A. Yes.

\* \* \* \* \*

[1774] Mr. Rosenberg: Now, he is going into whether or not they were advised by their lawyer.

Mr. Held: I am not asking the advice—

Mr. Rosenberg: And whether they reviewed it, and did he review it and—

Hearing Officer: Did you review the contract, that I wouldn't sustain an objection to.

Mr. Rosenberg: I would object to it as already answered. Once he consulted with a lawyer, what did he consult with him about.

The next question is what did you tell him, what did he tell you.

Mr. Held: Maybe that's your next question.

Mr. Rosenberg: I object to the question.

Hearing Officer: On that grounds, it is a standing objection.

Mr. Held: He didn't necessarily review the contract with him. He might have gone to the lawyer and said, "Hey, Lorenz Schneider wants to set up independent contractor status with us. Should I do it?"

Hearing Officer: I think we are quibbling; ask your question.

*Warren Klaus—for Petitioner—Cross*

Q. Did you review the contract with your attorney? A. Yes.

Q. Was the attorney present with you at the closing? [1775] A. Yes.

Q. Was this the attorney of your own choice? A. Yes.

Q. Mr. Klaus, prior to 1967, when for some reason you were sick or wanted to take a day off, were you required to notify the company?

Mr. Rosenberg: I would object to the question.

In the first place, it is two questions in one. I wouldn't object if he splits them up.

For example, when you were sick, did this apply?

Hearing Officer: Okay.

Go ahead.

Mr. Rosenberg: If he wanted to take a day off, in other words, he didn't want to work that day, wants to go to the ballgame, I don't think it should be in the same question.

Q. Prior to 1967, on a day when you were not reporting to work, did you notify the company—were you required to notify the company that you were not reporting to work? A. Yes.

Q. Have you notified the company that you are—that you will not be working on the days when you have attended these hearings? A. No, but they know.

Mr. Rosenberg: You heard what he said, but they know.

[1776] Mr. Held: Of course they know. After the fact. He is here.



*Warren Klaus—for Petitioner—Cross*

Mr. Rosenberg: Not after the fact. Before the fact.

Mr. Held: How could it be—

Mr. Rosenberg: Ask him—

Mr. Held: You can ask whatever questions you are desirous of asking, but please don't interrupt me.

Hearing Officer: All right, gentlemen, let's go on with the cross examination.

Q. (By Mr. Held) Mr. Klaus, approximately what were your earnings in the year prior to entering into the contract which gave you independent contractor status with the—

Mr. Rosenberg: I object to the form of the question.

If you refer to the contract in '67, I won't object, but don't say what it did.

Mr. Held: Didn't we establish this at the very beginning?

Hearing Officer: Mr. Klaus, what were your earnings in 1966, approximately?

A. That's a good question. I guess ten and eleven thousand dollars. I—I am talking about—I am taking a guess.

Q. Mr. Klaus, what were your earnings, last year?

Mr. Rosenberg: I would object to that. If he says [1777] the year immediately following '67, that is the year immediately after this contract was signed, it would be more probative, and carry some weight

*Warren Klaus—for Petitioner—Cross*

with it. Times have changed in the last four or five years.

Why pick last year? Why not pick this year, the year immediately following it? Even though we know there is inflation, it would still be easier to compare.

Hearing Officer: Why not pick both years—

Mr. Held: I think Mr. Rosenberg's answered it, himself, when he said it would be more probative. If he wants to ask that question, let him ask it. There is a probative value to that question.

If he wants to ask that question, let him go ahead and ask. He has an opportunity on redirect to ask whatever he wants to ask.

Mr. Rosenberg: I object to the question as not probative.

Hearing Officer: Overruled.

Go ahead, Mr. Held.

Q. (By Mr. Held) Well,— A. You asked me—

Q. Your earnings last year? A. Last year?

Q. Calendar year, 1971. A. About thirteen-seven.

[1778] Q. Do you know who establishes the prices that are charged the chain stores for the merchandise that you sell to them? A. No.

Q. Do you have independent stores, as well as chains? A. Yes.

Q. Do you—do the independent stores order the merchandise directly from you? A. I don't know what you mean by order.

Q. Well, do you go into the store and meet with either the manager, or the owner? A. In some, yes.

*Warren Klaus—for Petitioner—Cross*

Q. In some—in other independent stores, you don't go in and speak to the manager or owner? A. Well, some, you go in, they give you the order, and so you go in and you take your order.

Q. But you, personally, are the one who receives the order? A. Yes.

Q. And you say they give you the order, they tell you what they want for that time period? A. Yes.

Q. And in others you said you take the order.

Will you please explain that? A. Well, you walk in; you look at the rack. If it [1779] needs merchandise, you fill it in with what it needs.

Q. That decision is made by either you or the store manager? A. Right.

Q. Is this the same with the chain stores? A. In the chain stores, you walk in and take your order.

Q. You see what has to be placed in, based on the authorized list? A. Right.

Q. Has a store manager or owner in the independent stores, ever stated to you, in the instances where you take the order, and that you have not placed enough merchandise on the shelves? A. They probably have. I can't recall an incident, but they probably have.

Q. When a manager or store owner of the independent stores gives you his order, do you ever dispute that order, saying that the merchandise—that he has asked for too much merchandise? A. No.

Q. Then, what are the instances when the company would tell you that you haven't placed enough merchandise in a store, and in an independent store? A. What are the instances what?

*Warren Klaus—for Petitioner—Cross*

[1780] Q. When the company, Lorenz Schneider, would tell you that you have not placed enough merchandise in a store, that you should place more merchandise in a store?

A. To get back to the original train of thought, you are talking about independents right now, not chains?

Q. Independents. I am not talking about chains. A. I don't ever recall having an incident where the company told me in independents.

Q. But they did tell you this with chains? A. Yes.

Q. Was that in a King Kullen store? A. I have had several instances with different stores.

Q. The most recent incident being in a King Kullen store? A. No.

Q. What was the most recent? A. I believe Waldbaums would be with me.

Q. Approximately how long ago? A. Oh, during one of the promotions. Either Memorial Day or the Fourth of July.

Q. And the company told you—

Mr. Rosenberg: I didn't get the year that he is talking about.

Hearing Officer: You are talking about '72, aren't you, sir?

[1781] The Witness: Right. I am sorry.

Q. (By Mr. Held) Who in the company told you that there was not enough merchandise in the store, this Waldbaum's store? A. Well, it came through Ed Wheeler that was passed on to him, and I believe from one of the Wise or field representatives that they have.

But the message was passed on from our DR.



*Warren Klaus—for Petitioner—Cross*

Q. From the Wise department? A. From our DR, Lorenz Schneider.

Q. Ed Wheeler told you from the information he received from the Wise representative? A. I—

Mr. Rosenberg: He said a DR man.

Mr. Held: He said Ed Wheeler is a DR man. That is the man who told him.

A. That I was left with the impression that it was passed on from one of the field contact men.

Q. The Wise representative? A. Well, they have several. They are all Borden men now, I guess.

Q. On direct examination, you also testified about an incident with a King Kullen store.

Do you remember that testimony? A. I think you have me mixed up with Steve Rothberg.

[1782] Q. Steve Rothberg never testified.

Mr. Rosenberg: I think you didn't make clear to him what the testimony is, in reference to a King Kullen store.

You are talking about an incident about shelving, look at Page 1745. The King Kullen store involved shelving. That's why I say, give him the full question and ask him about his testimony, and there will be no confusion on the record.

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

*Warren Klaus—for Petitioner—Cross*

Q. (By Mr. Held) Do you service all your customers once a week? A. Yes.

Q. Mr. Klaus, you testified that shelving that you place in a store is used by your competitors? A. Yes.

Q. Did you inform anyone at Lorenz Schneider of this fact? A. We don't have to. They put it in for the whole section.

Q. Are you saying that Lorenz Schneider supports its competitors? A. When they put the shelving in, we do.

[1783] Q. Mr. Klaus, since you have been—since 1967, have you solicited independent stores on your own? A. Yes.

Q. Does the company permit these distributors, such as yourself, to sell stores, to sell stops to another distributor? A. Yes.

Q. Have you ever done so? A. Yes.

Q. Have you ever sold a stop that you solicited, yourself? A. I don't believe so.

Q. To whom did you sell stops? A. To whom did I?

Q. Yes. A. George Ward.

Q. Do you know approximately how much you received for that sale? A. About \$6,000.

Q. Prior to 1967—

Mr. Rosenberg: What was that name?

The Witness: George Ward.

Q. Prior to 1967, would you know whether the company had a profit sharing plan? A. Yes.

[1784] Q. When you executed—  
I withdraw that.

*Warren Klaus—for Petitioner—Cross*

Were you part of that profit sharing plan? Were you entitled to proceeds in it? A. Yes.

Q. When you signed the contract, in 1967, did you receive payments out of that profit sharing plan, for your termination? A. Yes.

Q. In the plan? A. Yes.

Mr. Rosenberg: Just a moment.

This may be under a former union contract, and I think I would object to that line of questioning, unless it was prefaced whether or not this profit sharing plan or anything else was pursuant to any contract with any union.

Mr. Held: The union contract is in evidence.

Hearing Officer: On that—

Mr. Rosenberg: I will withdraw the objection. I don't think it is important.

Hearing Officer: Okay. It is withdrawn.

Q. Can you tell us what Mr. Wheeler's duties are? A. He is the overseer of the operation in Riverhead.

Mr. Rosenberg: Can I have that read back?

[1785] Who did you ask about?

Mr. Held: Mr. Wheeler.

Q. Is Mr. Wheeler a DR man? A. Yes.

Q. Could you tell us what his duties are? A. He is the overseer, and makes sure things are running smooth. He checks routes, rides with them, gives a hand, et cetera.

Q. Does he ever ride with the men, now, at this time, at his own instigation, without permission of the men?

*Warren Klaus—for Petitioner—Cross*

Mr. Rosenberg: I object to the word "now".

Mr. Held: Subsequent to 1967.

Mr. Rosenberg: That means from 1967 on. That's what the word subsequent is referring to.

Hearing Officer: All right.

Mr. Rosenberg: Let's make sure he understands your question, sir.

Do you understand the question?

The Witness: No, I don't.

Mr. Rosenberg: I ask that it be—

Mr. Held: Okay.

Q. (By Mr. Held) Since 1967, since these contracts were entered into with the company, which the company claims makes the route salesmen independent contractors, does the DR man, be it Mr. Wheeler or prior to Mr. Wheeler, [1786] Mr. Casman, ride with you, has he ridden with you when you have not granted permission for him to ride with you?  
A. No.

Q. Prior to 1967, did your supervisor ride with you without requesting permission? A. I had no say. Of course he rode with me.

Q. When you—you previously testified that your earnings last year were approximately \$13,700? A. Approximately. That's, you know, I don't handle it, so—

Q. You are talking about earnings or taxable income?  
A. No, earnings.

Q. Now, there came a time when the company held a meeting in relation to trucks, dealing with the possible purpose of the trucks? A. Yes.

Q. Approximately when did this meeting take place, what year? A. '69, I believe.



*Thomas Judge—for Petitioner—Direct*

Q. Prior to that time, you had leased the truck? A. Right.

Q. What did they tell you—first of all, who was at this first meeting? A. I believe Mr. Price, Ed Grant, and Mr. Zuba, I believe.

\* \* \* \* \*

[1802] THOMAS JUDGE—Direct

Hearing Officer: State your name, please?

The Witness: Thomas Judge.

*Direct Examination:*

Q. (By Mr. Rosenberg) Mr. Judge, are you connected with Lorenz Schneider Company, as a distributor, or as a route salesman or call it what you will? A. Yes.

Q. How long have you been connected with this company? A. Not quite a year and a half.

Q. Out of which warehouse do you operate? A. Riverhead.

Q. Now, about a year and a half ago, did you acquire or purchase a so-called distributor route? A. That is correct.

Q. What kind of a route is it? A. It is a mixed route. Independent and chain.

Q. I see.

And when, exactly, did you acquire this route? A. Well,—

Q. You say approximately a year and a half ago.

Can you give us a little better date for it than that? A. My probationary period started in March of 1971, and my purchase was in June of 1971.

Q. Will you tell us, please, the circumstances under [1803] which you became a probationary routeman, in '71?

*Thomas Judge—for Petitioner—Direct*

A. I had talked to another distributor, and he informed me of the telephone number, and I had also seen that very same weekend, I had seen an ad in the New York Times, with the exact phone number. So I had called, made an appointment with Mr. Belmont—

Q. Mr. Belmont? A. That is correct. I had—

Q. Where did you meet him? A. In New Hyde Park. Upon my arrival at New Hyde Park, the receptionist asked me what I was there for, and I said I had come to talk to Mr. Belmont about purchasing a route. She handed me an employment application. I said, "I do not want a job. I want to buy a route."

She said, "Everybody has to fill out an employment application."

Q. Did you fill it out? A. I filled it out.

Q. What did you do with it? A. I handed it back to the receptionist and Mr. Belmont called me in. He explained to me what was available as far as routes and I told him I was primarily interested in Suffolk County. He said there was nothing available at the time, but he wanted to sell me another route in New Hyde Park somewhere. I kept in touch and the fellow who [1804] was running my route at the time was also on probationary period. He refused to take the route. We kept in touch and I agreed to take the route, probationary period starting sometime in March.

Q. Of what year? A. 1971.

Q. Now, would you describe your probationary period? What transpired during that time? A. I ran the route. Mr. Kasman had broke me in for a number of weeks, and I don't recall how many weeks it was. I assumed the company was satisfied because in my probationary contract it

*Thomas Judge—for Petitioner—Direct*

said that either the company could refuse to accept me from purchasing the route, or I could decline taking the route, either one.

So I accepted, took the route. They accepted me. We went to closing on—sometime in June.

Q. Now, sir, on Friday, November 26, 1971, did something transpire? A. Yes, it did.

Q. Would you tell us, please, what happened on that day, sir? A. It was the day after Thanksgiving, a Friday. I returned to the warehouse Friday afternoon at Riverhead, and I was informed that Mr. Gavigan wanted to speak to me.

Q. Who is Mr. Gavigan? [1805] A. He is part of the sales department staff at New Hyde Park.

Q. Of what, Lorenz Schneider? A. Of Lorenz Schneider, correct.

Q. Go ahead. A. I immediately called him, and he informed me that one of my accounts wanted to change their shelving in the store, and that he wanted me to supply two 48-inch racks, and one 36-inch rack.

Q. Do you remember the store? A. Hills, number 36 in Kings Park.

Q. All right.

Continue. A. I told them—

Q. What did he tell you? A. I told them that I refused to buy the racks because I was not consulted. I was not asked. I was not approached by my customer, the Hills store, as to whether—whether these racks were going to be used for an improvement of business, or what.

As it turned out, the change was not—

Q. Don't tell us what turned out later, just tell us what you said to Mr. Gavigan, and what he said to you. A. He said, if you didn't want to pay for the racks, let Frank Celentano know before Monday morning.

*Thomas Judge—for Petitioner—Direct*

[1806] Q. Who is Frank Celentano? A. A Wise representative. I did so on Saturday, the day after.

Q. What were you told by Mr. Gavigan would happen if you refused to install and pay for those racks? A. On Friday, he had not mentioned anything. He just told me to inform Mr. Celentano that I was not going to pay for the racks.

Q. All right.

And you said you informed him on Saturday, is that right? A. That is correct.

Q. What happened then? Tell us everything. A. He said he took my message and that—nothing was said.

Q. What happened on Monday, November 29? A. Monday, I went to the store on a regular delivery day, and the whole snack section was being altered by the company's—various company's representatives. I approached the manager, and he was aware of my position and not paying for the racks, and he told me, "Tom," he says, "I don't care who delivers the merchandise. This store must have Wise Potato Chips in the store. I don't care who delivers it."

Q. By whom? [1807] A. By the manager, that the representative was coming back later in the day—

I therefore was told that I—

\* \* \* \* \*

[1809] Q. Tell us, again, what did he say about you not being what with the store? A. If I did not buy the racks, I could not serve the store.

So, therefore, if—

Q. How much did you pay for that store? A. I paid \$2500 for that store.

Q. Okay. A. Roughly.

Q. What happened, then, when you were told that if you don't pay for the racks, you wouldn't serve the store? A.



*Thomas Judge—for Petitioner—Cross*

*Warren Hence—for Petitioner—Cross*

He told me I couldn't serve the store if I didn't pay for the racks. And I—if I didn't serve the store, he would serve the store.

I assume he meant he, Lorenz Schreider.

So, therefore, with a \$2500 investment, and a hundred dollars required to buy the racks, I chose to buy the racks, against my will.

Mr. Rosenberg: Your witness.

*Cross Examination:*

Q. (By Mr. Held) On Monday, November 29,— A. That is correct.

Q. You said that Frank Celentano came to the Hills store? A. That is correct.

[1810] Q. Did he put in the racks? A. On his return. He was there originally in the morning and he came back with the racks. Then, I arrived at the store, and he told me to call New Hyde Park, to get the whole matter straightened out.

Q. Do you know for whom Frank Celentano works? A. He works for the Wise Potato Chip Company.

Q. He is an employee of Wise? A. That is correct.

\* \* \* \* \*

[1837]

WARREN HENCE—CROSS

Hearing Officer: Do you object to Mr. Held questioning him on matters that have been—

Mr. Rosenberg: Cross examining him, yes, questioning him, no.

*Frank Blumberg—for Employer—Direct*

Hearing Officer: Then with that understanding, proceed, Mr. Held.

Mr. Held: Was there an outstanding question?

How much, approximately how much had he paid for the route?

Hearing Officer: Go ahead, Mr. Hence.

A. Can I say something on that?

Hearing Officer: Sure.

Mr. Rosenberg: Just a minute.

Just answer the questions.

The Witness: I want to explain, I paid an initial amount for the route, and I had bought initial more volume.

Do you want me to put that all together?

Q. How much did you pay, initially, for the route? A. \$23,000, roughly.

Q. Did you give a down payment? A. Yes, sir.

Q. Approximately how much? A. \$5,000.

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[1840]

FRANK BLUMBERG—Direct

Q. (By Mr. Held) By whom are you employed? [1841]

A. Lorenz Schneider Company.

Q. In what capacity? A. Assistant sales manager.

Q. Would you explain your duties as assistant sales manager? A. I work with General Manager Mr. Zuba, in all phases of the sales operation. This is seeing that we have enough stock in the warehouse for our distributors. I also

*Frank Blumberg—for Employer—Direct*

have the duties to collect all payments that are due each and every week from our distributors. I make schedules for our distributors and so forth.

Q. I refer you to April 20, 1972, on that day, did you have a conversation with Fred Mockel? A. Yes.

Q. Do you remember the day of the week that this conversation took place? A. Thursday morning.

Q. Did Mr. Mockel come to you? A. Fred Mockel came in to me in reference to paying his statement, which was for service.

Q. What did he say to you? A. He said his—he wasn't satisfied with the statement that he got, which was for two weeks route coverage, plus his service. He said he was very unhappy with the place, the sales were not there, that he is giving his [1842] route up. He is quitting, he is going to leave Lorenz Schneider Company. He said he has nothing to lose. He told me that they can take the money that bank gave him; give it back to the bank. He is quitting, and he is leaving the company.

With that, he left.

Q. Was his brother, Roy Mockel, present during this conversation? A. He come in about, in the middle of the conversation.

Q. Did Roy Mockel say anything? A. He said he is leaving with his brother. He has had it with Lorenz Schneider. They are leaving. There—they are not coming back any more.

Q. They then left you? A. They left me.

Q. Did you speak to either of the Mockels, Fred or Roy, any further that day? A. No, sir.

*Frank Blumberg—for Employer—Cross*

Q. And on the following day, which was Friday? A. No, sir.

Q. Did you attempt to reach them? A. Thursday of that week, I attempted four or five times, the same amount of times on Friday, to reach them.

Q. Did you speak to either Roy or Fred Mockel, any time from Thursday morning, when they left your office, [1843] until Monday morning, at nine o'clock?

\* \* \* \* \*

[1882] *Cross Examination:*

Q. Now, sir, how did you break the locks? Will you please explain to us what you did? A. I cut them.

Q. How did you but them, with a scissor? A. No, with a wire cutter.

Q. Didn't you, at the time you cut those with a wire cutter, know that the merchandise in that truck was the property of the Mockel brothers?

Mr. Held: Could you repeat that question, please?

(Question read by reporter.)

A. I would have to check the records if that merchandise was paid for or not.

Q. Did you check the records whether that merchandise was paid for? A. No.

Q. At the time you cut with the cutters, the locks on those two trucks, you did know, however, that those trucks had been leased to the Mockel brothers, did you not? A. Yes.

Q. Did you take possession of those trucks at any time?  
A. We didn't take possession. We inventories them.



*Frank Blumberg—for Employer—Cross*

Q. After you broke the locks, what did you do? A. We inventoried the trucks.

Q. Who is present when "we" inventoried the trucks? [1883] A. The general office manager, Mr. Detweiler, and DR Nat Sankin.

Q. Now, sir, what did you do with the merchandise on the truck after you inventoried it? A. Well, we put it back on the truck. Mr. Detweiler bailed them out, and a copy was given back to me, and it was put into his bin.

Q. Whose bin? A. Fred and Roy's.

Q. Didn't you tell us that they quit? A. They did.

Q. After they quit, they still had a bin in your place? A. They still had to come back and bail out to us.

Q. Who told you that? A. They had to get credit for the stuff they had on their truck.

Q. You mean the only way they are going to get credit, is to look in their bin to see if you put a slip in there? A. No, we would give them credit.

Q. Would you give them credit without the bin? A. Why not?

Q. Would you give them credit without the slip? A. Without what slip?

Mr. Held: What slip?

Q. The list of the stuff you took out of the truck?

\* \* \* \* \*

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**Petitioner's Exhibit 1**

CONSTITUTION AND BY-LAWS  
of the  
INDEPENDENT ROUTEMEN'S ASSOCIATION

-----

*Petitioner's Exhibit 1*

CONSTITUTION AND BY-LAWS  
of the  
INDEPENDENT ROUTEMEN'S ASSOCIATION

- - - - -

ARTICLE I

Section 1. The name of this Association shall be INDEPENDENT ROUTEMEN'S ASSOCIATION.

ARTICLE II

OBJECTS AND PURPOSES

The objects for which this Association is formed are as follows:

For the negotiation with any manufacturer, prime distributor or dealer or franchisor of nationally or locally advertised confectionary and food products in regard to wages, hours, territories, working conditions, commissions, fringe benefits and all matters pertaining to the earnings, welfare, future and retirement, sickness and other rights of employment and/or as distributor of such confectionary and food products.

For the mutual advancement of the interests of its members; to consider and deal with common intra-industry problems of management and employment of the confec-

*Petitioner's Exhibit 1*

tionary and food product industry in the distribution of confectionary and food products to mercantile establishments and all other sources and outlets for the sale or distribution thereof; to inculcate principles of justice and equity in the said confectionary and food product industry; to promote activities aimed at enabling the industry to conduct itself with the greatest efficiency and economy; to promote free intercourse among its members and to give proper consideration and expression of opinion upon questions affecting the industry and to acquire, assemble, preserve and disseminate valuable business information; to adopt standards of conduct and operation for the industry and by lawful means secure and obtain compliance by its members with the health regulations of the State of New York and its various political subdivisions, and to obtain such compliance by all persons, firms, and corporations engaged in the industry; and to do all such lawful acts and things necessary and/or proper to promote the general welfare of the industry and for the accomplishment of any objects herein set forth or which shall be recognized as proper and lawful objects of a trade association; all of which shall be consistent with applicable law, public interest, as well as the interest of this industry and trade.

**ARTICLE III****MEMBERSHIP**

Section 1. Membership-Eligibility: Membership in this organization shall be limited to persons or firms or corporations engaged in the sale and distribution of confec-



*Petitioner's Exhibit 1*

tionary and food products within the States of New York, New Jersey and Connecticut.

Section 2. Application: Application for membership in this Association shall be made in writing on a form provided by this Association and shall be accompanied by cash or check for the initiation fee as specified in a subsequent section of these By-Laws.

Section 3. Application for membership shall be rendered to the Board of Directors for action, which shall thereupon duly investigate the same and vote upon said application at the next regular meeting of the Board of Directors. A Majority vote of the Board present shall be necessary for the approval of each application for membership. Before the Board shall pass upon the qualifications of any applicant, the President shall request the membership committee, appointed by him to investigate and report their findings to the Board of Directors.

Section 4. Resignation: Resignations of members must be made to the Secretary of the Association who shall be forthwith deliver the same to the Board of Directors for action.

No member shall be permitted to resign in good standing until his dues shall have been paid to date.

Section 5. *Expulsion*: Any member shall be liable to expulsion or suspension for good cause shown, on a vote of a majority of the Board of Directors and members, such cause or causes to be noted on the minutes of the meeting.

*Petitioner's Exhibit 1*

Section 6. *Reinstatement*: The Board of Directors shall have the power to reinstate a member who has previously resigned, provided said member was in good standing at the time of his resignation, and shall have the further power of reinstating a member who had previously been expelled upon such terms and conditions as in its discretion it shall deem just and proper.

ARTICLE IV

DUES AND ASSESSMENTS

Section 1. Dues: The annual dues of this Association shall be a sum equivalent to

\* \* \* \* \*

**Petitioner's Exhibit 4**

[Letterhead of Rosenberg, Rosenberg & Rockman, 114 Old Country Road, Mineola, N. Y. 11501]

March 27th, 1972

Lorenz Schneider Co. Inc.  
2000 Plaza Avenue  
New Hyde Park, N. Y. 11040

Attn: Mr. Milton V. Brown  
Re: Our File No. 72-41

Gentlemen:

Your letters of March 15th and 17th of 1972 have been received by your distributors and turned over to us, the attorneys for the Independent Routemen's Association, in which association the overwhelming majority of your distributor salesmen are members.

The undersigned and the Committee of the Independent Distributors Association, representing the overwhelming majority of your distributor salesmen, welcome the opportunity to sit down with you to discuss grievances, working conditions, earnings and other problems concerning the distributor salesmen, their routes and your company.

Will you please contact the undersigned to arrange a mutually agreeable time and place for such discussions.

Very truly yours,

ROSENBERG, ROSENBERG & ROCKMAN

By HARRY ROSENBERG

**Petitioner's Exhibit 10**

January 3, 1972

Mr. Stephen Rothberg  
21 Hewes Street  
Port Jefferson Station, N.Y.

Dear Steve,

It has been two and a half months since you purchased the King Kullen store #24 on Larkfield Road in East Northport. During this period we have received numerous complaints from the store manager and Mr. Bob Shipper, supervisor of King Kullen, in reference to *poor service*.

It was also brought to our attention that when Mr. Herbst was serving this account for years, King Kullen was very satisfied with the service performed and the attention Mr. Herbst gave to this store. Of course this is the way all stores should be serviced, keeping the management happy and satisfied by properly servicing their stores.

With the complaints we received to date and although you have been spoken to regarding these complaints, it is evident that you are not interested in this account, because of the latest complaint on December 28, 1971 by Mr. Shipper, supervisor of King Kullen. He walked into the store, saw the stands were depleted, called our office for service and you were notified. You called on the store the next day, Wednesday, December 29th, and dressed the shelves and did not leave any merchandise. Finally you serviced the store on Thursday, December 30th.



*Petitioner's Exhibit 10*

You did set up a display in this store on December 6, 1971 and the manager took it down because you did not follow up in keeping the end full, and gave it to competition. When you were asked about it, you informed the manager we closed the warehouse on Friday. Steve, this was a very poor excuse on your part, for you had merchandise on your truck and could have made arrangements to service this store even before Friday.

It was also brought to our attention that you give Stanley, the manager, a hard time when he requests more merchandise. Mr. Shipper requested another distributor service this store. However, we were able (once again) to resolve this problem with Mr. Shipper to let you keep on serving this store. However, should your attitude continue, Mr. Shipper informed us you will not receive another chance.

Therefore, for the record Steve, should you be refused by King Kullen management to serve this account because of your attitude and poor service, you will not be entitled to any credit for this account.

Yours truly,

EDWARD ZUBA  
General Sales Manager

EZ:mbe

**Petitioner's Exhibit 13**

*REFER TO MEMO OF JAN. 1971 ANY DISTRIBUTOR OR SALESMEN WHO IS NOT READY TO LOAD HIS TRUCK BY 6:00 P.M. WILL NOT RECEIVE HIS LOAD REGARDLESS OF WHAT TIME HE PULLS INTO THE GARAGE. THE GARAGE IS OPEN BY 5:30 A.M. IN ORDER FOR ALL MEN TO GET AS EARLY A START AS NEEDED IN ORDER TO RETURN EARLY.*

K. PRICE

**Petitioner's Exhibit 36****INDEPENDENT DISTRIBUTORS' PROCEDURE****ORDER & LOADING MERCHANDISE**

1. Distributor will receive daily in his mail bin four (4) part merchandise order (loading) form.
2. As presently, distributor will make up his order for merchandise two days in advance. For example: He will prepare his Thursday order on Tuesday for loading on Wednesday night.
3. Distributor's order for merchandise will be left by him daily in a designated space provided by the cashiers.
4. Orders will be picked and placed on skids by the warehousemen daily and the last two copies of the order form will remain with the load. The first two copies will be returned to the cashiers for pricing and extending after quantities are checked and approved by a warehouse supervisor. Fourth copy (yellow) must be signed by distributor and given to the loader or warehouse supervisor before loading, where it will be checked against Control Sheet. The other copy will be retained by him for checking against second copy, machine extended invoice left in his box. The distributor will be responsible for merchandise after he checks his load.
5. No changes will be allowed on Order (loading) sheet. If there is a change and a charge or credit is to be made, the change **MUST BE APPROVED** by the warehouse manager or super in charge and agreed to by the distributor. A separate invoice will be issued to cover the change after the load is prepared and checked.

*Petitioner's Exhibit 36*

6. The distributor will receive assistance in loading his truck.
7. It is recommended that the distributor keep a Weekly Recap sheet of merchandise delivered and billed to him for his permanent record.

## PAYMENT FOR MERCHANDISE AND OTHER EXPENSES

1. Payments must be made by Thursday morning of the following week for statement of purchases rendered for the preceding week. Any distributor who does not conform will have his merchandise stopped until he makes his payment. The above will also apply to any man whose check for merchandise bounces. Any man whose check bounces twice within a three month period will go on C.O.D. until we are satisfied his account is in good standing.
2. *Charge Accounts—Applied as Payments:* All approved charge accounts turned over to Lorenz Schneider for collection by Independent distributors will be applied toward his payments for merchandise. Existing authorized charges shall be honored and protected for first two years. New charge accounts and existing charge accounts after two years from date of contract shall be responsibility of distributor. *Central Billing* accounts are the responsibility of and liability of the manufacturer. Distributors will give cashiers:
  - A. Daily cash sheet on which he will list total credit due him.



*Petitioner's Exhibit 36*

B. A tape listing amount of customers charge invoices.  
(He should also keep a tape.)

C. All charge account invoices which will be billed and collected for the distributor.

3. *Rebate Policy—Independent Distributors:* Our policy will remain the same. Sales listed below based on 4 week or 5 week month.

Rebate of 3% on monthly sales from \$100 to \$200.

Rebate of 5% on monthly sales from \$200 and over.

Rebate of 1% override to Coop Headquarters on members purchases who received less than 5%, i.e. 3% accounts. No override if rebate is 5%.

A. Distributor will reimburse Lorenz Schneider for all rebates due to his customers that will be processed and paid for by Lorenz Schneider to Coop members, the Coop Headquarters and charge customer accounts.

B. The distributor will pay rebates direct to his cash customers, for any rebate due to them. It is suggested that such rebates be paid to his customers by check for evidence of payment.

4. *Payments—Others:* On Thursday of the second week and every week thereafter, the man will pay the following:

Warehousing, receiving merchandise, putting up and loading trucks, telephone service, billing charge accounts as applicable.

Payments for stands, racks, coverage of route, and miscellaneous bills will be payable on a weekly basis as billed.

*Petitioner's Exhibit 36*

*Payments for interest, monthly payments on purchase price of route and others to be made on first 1 riday of each month as applicable.*

Truck Rental.....As applicable.

## DISTRIBUTOR CHARGES

All accounts that are recognized as charges on the No Discount Ledger will be accounts turned in to the cashiers with a cash sheet listing charge accounts by types of tickets and amounts as done at present. (See para. 2 Charge accounts applied as payments.) A bill will be presented monthly for the 3% or 5% rebate allowed on these accounts.

## DISTRIBUTOR CASH ACCOUNTS

1. *Coops*—Since all recognized coops receive rebates from the first dollar, they will be turned in to the cashiers daily and listed therein as done at present. The office will not assume responsibility for payments to Coops but will tape up all tickets received and from tickets will advise him how much he owes us for 1% override on 3% accounts to Coop Headquarters.
2. *R Accounts*—Lorenz Schneider assumes no responsibility for R Accounts, but will help the distributor if he so wishes by retaining all tickets he turns in designated R Accounts on a cash sheet until the end of the month and then tape up the accounts to determine the amount of rebate to be paid. Lorenz Schneider will then prepare a sheet listing name and address and amount to be paid by the distributor. The distributor will send his own checks to his own R Accounts.

**Petitioner's Exhibit 38**

[Letterhead of Lorenz Schneider Co. Inc., 2000 Plaza Avenue, New Hyde Park, N. Y. 11040]

May 29, 1970

MEMORANDUM TO: ALL LORENZ SCHNEIDER DISTRIBUTORS

We have received a letter of complaint from Wise that they have received complaints from stores that the distributors did not charge the same prices—in other words, they, the distributors, have not been uniform in the prices they have been charging to the stores.

We have taken up this problem with our attorney, and he has advised us that just as Wise is subject to the Robinson-Patman Act and the Federal Trade Commission regulations applicable to this Act, so is our company subject to the same Act and Regulations and that you, as independent distributors, are also subject thereto and are bound by the provisions and regulations with respect to uniform pricing.

Our attorney has further advised us that your failure to comply with Robinson-Patman and F.T.C. regulations with respect to uniform pricing will subject you to prosecution by the federal government as well as civil law suits for triple damages.

We call this to your attention, hoping that you realize the importance of this matter and that you, as independent businessmen, will not endanger your business and your livelihood.

Edward Zuba  
General Sales Manager

# **Employer's Exhibit 1**

Feb. 14, 1972

Pickquick Motor Inn

George Murphy called the meeting to order at 7:35, and introduced Harry Rosenberg.

Mr. Rosenberg started by telling us about his other clients in the same or similar business. He then went on to tell about a ruling given by the Labor Relation Board on the Tropicana suit.

After Mr. Rosenberg left the meeting George asked for motions on for an name for the association, George Bush put the motion for it to call THE INDEPENDENT ROUTEMEN'S ASSOCIATION and Joe Breier second it. The motion was carried 100%.

A motion was put forth to nominate temporary officers until a general election can be held. This motion was carried 100%.

## Temp. officers:

John Stockton—Sec.

George Murphy—Pres.

Warren Hance—Vice Pres.

George Bush—Treasurer

## Temp. committee:

W.Klaus

L.Pappas

W.Otto



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*Employer's Exhibit 1*

J.Del Prete

R.Volz

T.Judge

H.Katz

Lawyers fee to be \$10,000.00 as a retainer.  
Next meeting to be held on Feb. 25, 1972.

Respectfully submitted

/s/ JOHN R. STOCKTON  
*Secretary*

**Employer's Exhibit 3****BALANCE SHEET FOR PROSPECTIVE PURCHASERS**

<u>ASSETS (What I Own)</u>	<u>LIABILITIES (What I Owe)</u>
Cash on hand and in bank ... \$-----	Notes owing following banks \$-----
Name of bank -----	(Secured) -----
Notes Receivable (worth to-day) -----	(Unsecured) -----
Past Due -----	Notes given relatives & friends
Accts. Receivable (worth to-day) -----	1. -----
Past Due -----	2. -----
Salable Mdse.—at Cost -----	3. -----
Stocks and Bonds -----	Accts. & Bills—Mdse Due -----
Total Quick Assets -----	(Past Due) -----
Mortgages Owned -----	Other Accts. & Bills Due -----
Automobile and Trucks -----	(Past Due) -----
Make and Year -----	Total Current Liabilities -----
Furniture & Fixtures -----	Mortgages on Real Estate -----
Machinery & Equipment -----	Mortgages on Chattels -----
All other Personal Property -----	Reserve for taxes -----
(itemize)	Judgment & other liens -----
a. -----	(unpd. tax) -----
b. -----	All other debts -----
c. -----	Total Liabilities -----
Real Estate Owned (See -----	Net Worth -----
Schedule) -----	
Total Assets ----- \$-----	Total ----- \$-----

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*Employer's Exhibit 3*

SCHEDULE OF REAL ESTATE OWNED

<u>Title in the name of</u>	<u>Description of Property</u>	<u>Lots No.</u>	<u>Acres</u>	<u>Mtge</u>	<u>Appr. Value</u>	<u>Due Date Mtge</u>
				\$	\$	

Bank Reference \_\_\_\_\_

Bank Reference \_\_\_\_\_

Credit Reference \_\_\_\_\_

Credit Reference \_\_\_\_\_

Credit Reference \_\_\_\_\_

"I hereby certify that the answer contained in this Franchise Application and Financial Statement are true and correct".

Signed \_\_\_\_\_

**Employer's Exhibit 4-A**

Memorandum of Agreement between LORENZ SCHNEIDER Co., Inc., hereinafter referred to as "L/S", and .....  
 ..... residing at .....  
 ..... hereinafter referred to as the "Purchaser".

(1) L/S acknowledges receipt of the sum of .....  
 ..... (\$.....) DOLLARS from the Purchaser to bind the sale of Route #..... subject to execution of a more formal contract as currently used by L/S for the sale of routes, a copy of which has been exhibited to the Purchaser and approved by him.

(2) This binder shall be effective for a probationary period of sixty (60) days, during which either party reserves the right to cancel this agreement, upon twenty-four (24) hours notice. In such event, the deposit paid hereunder shall be returned to the Purchaser, less any shortages in inventory, spoils, rebates and other charges.

(3) At the end of the sixty (60) day probationary period and provided the Purchaser, in the sole judgment of L/S meets and fulfills its requirements and standards for the proper handling of said route, the parties shall execute the formal contract. The unpaid balance of the purchase price shall be secured by a security agreement, (chattel mortgage) for a period not to exceed twelve (12) years, to be repaid monthly with interest from the date of this binder, at six (6%) per cent for the first five (5) years, seven (7%) per cent for the next two (2) years, and the then maximum prevailing rate thereafter.

(4) The profit from the said route during the probationary period shall belong to the Purchaser. In consideration therefore, whether or not the Purchaser exercises



*Employer's Exhibit 4-A*

his right to cancel this agreement, he shall pay interest at six (6%) per cent on the total purchase price, less the deposit paid on signing this binder. This six (6%) per cent interest shall be paid weekly during the probationary period. Upon signing this agreement, it is understood that if the distributor, on his own, increases the volume on the route during the sixty (60) day period, there will be no additional charges made for this volume. It is also understood that any equipment, stands, shelving, etc. put on the route by the distributor will be charged to him. If the distributor does not consummate the purchase at the end of sixty (60) days, he will be refunded for said stands, shelving, etc.

(5) The Purchaser will be trained for two (2) weeks by an L/S trainer. If he cancels this agreement prior to the signing of the formal contract, he agrees to pay L/S \$300.00 as training fees.

LORENZ SCHNEIDER Co., INC.

By .....  
*Vice President*

Dated: New Hyde Park, N. Y.

.....

.....  
*Purchaser*

In presence of

.....

CDP-1  
rev. 8/5/71

### Employer's Exhibit 5-A

THIS AGREEMENT made in Queens Village, City and State of New York, on the 5th day of May, 1967, by and between LORENZ SCHNEIDER Co. Inc., a domestic corporation duly organized and existing under the Laws of the State of New York, and having its principal place of business at 217-40 98th Avenue, Queens Village, City and State of New York, herein called the DEALER, and .....

.....  
hereinafter called the DISTRIBUTOR.

#### WITNESSETH:

WHEREAS, the DEALER is a franchised dealer for the five (5) boroughs of the City of New York and for Nassau and Suffolk Counties on Long Island, State of New York, for several specialty food products and related items (and has an established business with customers such as chain stores, co-operative associations and independently owned stores throughout this area), and

WHEREAS, the purchaser is desirous of becoming a DISTRIBUTOR for the sale of the products described above and upon the terms and conditions hereinafter set forth,

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The DEALER hereby sells to the DISTRIBUTOR 34 of <sup>number</sup> store customers in the County of Queens as per attached schedule, established by the DEALER for the purpose of continuing the sales in said chain stores of the products <sup>chain or ind.</sup> franchised to the DEALER and for such other products as may be added by the DEALER from time to time;

*Employer's Exhibit 5-A*

- 1a. The Seller represents the weekly business  
average as \$
- 1b. The purchase price to be paid by Dis-  
tributor is \$
- 1c. The terms of payment are as follows:  
Upon execution of this agreement \$  
Balance \$

Said balance shall be paid by the DISTRIBUTOR to the DEALER, by executing and delivering to the DEALER as of the date of closing a promissory note which promissory note shall bear interest at the rate of three per cent (3%) per annum for first two (2) years, four per cent (4%) per annum for next three (3) years, five per cent (5%) for next ten (10) years, a copy of which promissory note shall be attached to and made a part of this Agreement, as SCHEDULE D, reference being made thereto for the terms thereof, and payment of which promissory note will be secured by a chattel mortgage in the same amount upon said route.

Transferee agrees to perfect such security interest by executing and delivering to Transferor a Security Agreement and a Financing Statement, in accordance with the provisions of the Uniform Commercial Code, and all other instruments or documents as may be required by the Transferor. The filing fees thereof and reasonable attorney's fees shall be paid by the Transferee.

In the event that DISTRIBUTOR, personally, averages a twenty (20%) per cent increase in volume over the weekly average as of August 1, 1966, within three (3) years from

*Employer's Exhibit 5-A*

closing date, DEALER will award a reduction in purchase price or in remaining unpaid balance of an amount as appears on chart for sales and longevity of service with DEALER prior to closing.

2. The DISTRIBUTOR agrees to purchase the route, including said number of customers, stands in said stops and good will, and agrees to use his best efforts to distribute, procure sales for, to obtain increased space, new accounts, to merchandise and otherwise to increase the volume of sales for the authorized franchised products of the DEALER without regard to fixed or bounded territory except that DISTRIBUTOR may not solicit accounts outside franchised area of DEALER.

3. The DEALER agrees to furnish the DISTRIBUTOR with the route books and customer books, without charge, for the accounts of the above number of customers currently doing business with the DEALER.

4. The DEALER agrees to sell merchandise to the DISTRIBUTOR at prices listed for DISTRIBUTORS, and that said prices will not exceed the prices charged other DISTRIBUTORS at any time. These will be supplied daily or weekly by DEALER. With reference to the purchases of the DISTRIBUTOR, the DISTRIBUTOR shall pick up his order no later than ..... o'clock .....M of any day, and on that same day he shall telephone his order in for the following day not later than ..... o'clock .....M.

5. The DISTRIBUTOR shall pay the DEALER for all products purchased from the DEALER every three days.



*Employer's Exhibit 5-A*

## INDEPENDENT DISTRIBUTORS

## FIRST 6 MONTHS

*On Monday of the 2nd week*—payments will be made for merchandise received on Monday and Tuesday of the first week.

*On Friday of the 2nd week*—payments will be made for merchandise received on Wednesday, Thursday and Friday of the first week.

## AFTER 6 MONTHS

Merchandise received on Monday and Tuesday will be paid on Friday of that week.

Merchandise received on Wednesday, Thursday and Friday will be paid on Wednesday of the 2nd week.

## CHARGE ACCOUNTS

All approved charge accounts turned over to Lorenz Schneider for collection by Independent Distributor will be applied toward his payments for merchandise.

## CHAIN STORE DISTRIBUTORS

The chain store operation is principally with charge accounts and little or no cash sales are made by the distributor. The approved accounts receivable charges turned over to Lorenz Schneider for collection will be used as a payment for merchandise.

Since the chain distributor will have little or no cash coming in from the route, we will advance to him thirteen

*Employer's Exhibit 5-A*

(13%) per cent of the accounts receivable charge sales turned in for collection on Tuesday of the second week and each week thereafter.

On the second week following the close of the business month a settlement will be made of all amounts due to him on the accounts receivable sales exchanges turned into Lorenz Schneider for collection.

In order to provide a reasonable profit to the DISTRIBUTOR, and the advertising necessary for the expansion of sales, a twenty (20%) per cent profit (approximately) for sales to independent stores, and a twenty (20%) per cent profit (approximately) less rebate, to chain stores, is presently the gross profit. Exceptions to this policy might arise, from time to time, as the MANUFACTURERS' prices are changed, at which time proper and timely notification, by the DEALER to the DISTRIBUTOR, will be made in writing.

The DISTRIBUTOR shall pay to the DEALER a service charge of THIRTY-SEVEN and 50/100 (\$37.50) DOLLARS per week, which service charge shall represent the cost to the DEALER of handling the DISTRIBUTOR's stock on behalf of the DISTRIBUTOR, telephone, office and other services to be rendered. In handling the DISTRIBUTOR's stock, the DEALER, with his place of business or warehouse, shall act as a warehouse for the DISTRIBUTOR, fill his orders, etc. and when the CHAIN DISTRIBUTOR pays for the purchases made by him for the previous seven days, he shall receive credit for any chain sales turned in at the time.

6. The DISTRIBUTOR agrees to maintain accurate route books at all times and accurate customers' books. This is

*Employer's Exhibit 5-A*

for protection of DISTRIBUTOR and for evaluation of stops when selling off part of route, as well as for governmental tax examination purposes, or for purposes of adding trucks for added routes.

7. The DISTRIBUTOR agrees to recognize the Procedures of the DEALER pertaining to DISTRIBUTORS.

8. The DISTRIBUTOR shall be responsible for merchandise discounts or rebates to all those retailers who earn the same, said discounts are to be uniform with the DEALER's as required by F.T.C.

9. The DISTRIBUTOR agrees that the DEALER shall not be liable for any act or acts of the DISTRIBUTOR, nor shall the DISTRIBUTOR bind or attempt to bind the DEALER in any manner, and nothing herein contained shall be construed as creating the relationship of Employer and Employee between the parties, that the DISTRIBUTOR shall be deemed at all times to be an independent contractor.

10. The DISTRIBUTOR shall cause his name to be placed on his sales tickets, route number and initial on chain store pads.

11. In the event of a recoup by the DEALER for cause, the current rates based on weekly volume for repurchase shall apply. In the event that the DISTRIBUTOR desires to sell his route, or a segment thereof, anytime to an accredited buyer he may or we will purchase within thirty (30) days at the same 10 for 1 ratio.

*Employer's Exhibit 5-A*

- (A) If the DISTRIBUTOR shall become incapacitated for a period of longer than ninety (90) days and shall be unable to supply someone sufficient and efficient enough to cover the route properly, then the DEALER shall have the right to repurchase said route under the same terms and conditions as above set forth.
- (B) If the DISTRIBUTOR should handle a charge sale other than central billing accounts which is turned over to the DEALER and which is uncollected for ninety (90) days for any reason, the DISTRIBUTOR shall immediately thereafter reimburse the DEALER for the amount of said sales at the end of said ninety (90) day period.

Existing authorized charges shall be honored and protected for first two years. New charge accounts and existing charge accounts after two years from date hereof shall be responsibility of DISTRIBUTOR. *Central billing* accounts are the responsibility and liability of the manufacturer.

- (C) In the event that the DISTRIBUTOR wishes to cancel this contract and to resell the aforesaid route to the DEALER, notice thereof in writing must be served by the DISTRIBUTOR upon the DEALER requesting the same, and on or before thirty (30) days thereafter the DEALER and/or his designee must repurchase the route upon the same terms and conditions upon which the same was originally purchased by the DISTRIBUTOR from the DEALER.
- (D) That in the event of the termination of this contract by either party, it is understood that no complete



*Employer's Exhibit 5-A*

settlement can be made, nor shall any complete settlement be made, until the DISTRIBUTOR has turned over to the DEALER all of his route books up to the date of termination, which route books shall cover a period of fifty-two (52) consecutive weeks prior to the termination of said contract, which route books (and cards) shall thereupon become the sole property of the DEALER. FIVE HUNDRED (\$500) DOLLARS shall be held in escrow until final values are determined and all bills, charges are settled, and spoils picked up.

12. In the event of such sale, the DISTRIBUTOR agrees not to re-enter a business of distributing the same or like products for a period of one (1) year, to customers serviced by him.

13. The DISTRIBUTOR shall purchase this exclusive right from the DEALER upon the following basis:

The DISTRIBUTOR shall pay the DEALER the sum of ONE THOUSAND (\$1,000) DOLLARS for each ONE HUNDRED DOLLARS (\$100) worth of business sales per week for the accounts set forth in SCHEDULE A. as averaged over the period of fifty-two (52) weeks prior to the date of purchase. This figure shall also apply proportionately to any fraction of said each ONE HUNDRED (\$100) DOLLARS worth of business sales.

39 Weeks—at the ratio of—	9 for 1
26   "       "       "       "       "	6 for 1
13   "       "       "       "       "	4 for 1
Less than 13 Weeks	3 for 1

*Employer's Exhibit 5-A*

14. In order to protect the large number of DISTRIBUTORS, and in the event of the death of the DISTRIBUTOR, the Estate of the said DISTRIBUTOR, unless a member of family can operate route, must sell said right to said franchise or to third party or assign the same to the DEALER or its designee, upon the same terms and conditions as in the case of the original sale, which mandatory sale back to the DEALER, or to his designee, shall be binding as against the legal representatives, heirs and assigns of the DISTRIBUTOR, as well as against the DISTRIBUTOR.

15. The DEALER shall not terminate or cancel this Agreement if the DISTRIBUTOR faithfully performs his duties hereunder, and this Agreement shall continue in full force and effect until terminated by either party for just cause as enumerated herein or upon notice.

16. The DEALER may cancel this franchise and Agreement for the following reasons:

- (A) The failure of the DISTRIBUTOR to make the payments due under the terms of the promissory note herein referred to.
- (B) The handling by the DISTRIBUTOR of items in addition to those which he may purchase from the DEALER, which are in direct competition with those already purchased. A written request by the DISTRIBUTOR to the DEALER enumerating non-competitive items for handling may be made. Consent shall not be unreasonably withheld.
- (C) Since chain stores or cooperative stores give authorizations for the specific items to be sold in each

*Employer's Exhibit 5-A*

store, the sale of unauthorized items by any DISTRIBUTOR is prohibited, to avoid the elimination of DEALER's items from such chain or cooperative stores as a penalty to the detriment of other DISTRIBUTORS.

- (D) 1. The wilful neglect of the DISTRIBUTOR in properly serving his customers.
- 2. Any act deemed dishonest, to customer or DEALER.
- (E) For the benefit of all DISTRIBUTORS who may be involved, the failure of the DISTRIBUTOR to turn over to the DEALER during the first week of each month the necessary records and rebate funds to cover any of the DISTRIBUTOR's accounts with a cooperative store or chain store and for which the DEALER is handling the rebating to said cooperative or chain store on behalf of the DISTRIBUTOR.
- (F) By the failure of the DISTRIBUTOR to supply the DEALER with the necessary information on the first day of each month, which is required for use by the DEALER in filling out reports for THE WISE POTATO CHIP COMPANY and other manufacturers, with which advertising contracts may be held. This, too, for benefit of all concerned.

17. If better route is open, DISTRIBUTOR may buy, after selling his route to third party, and seniority of service to DEALER shall govern. If no third party sale, DEALER will repurchase at same rate. Prospective buyer must not have had police or criminal record.

*Employer's Exhibit 5-A*

18. If the DEALER shall sell or transfer his franchise or be replaced by another DEALER, the same shall not be deemed to annul this Agreement or interfere with the DISTRIBUTOR's exclusive rights herein set forth, and any successor DEALER shall be bound by the terms of this Agreement.

19. Manpower to operate route during DISTRIBUTOR's illness or vacation, shall be available at \$130. per week (\$26. per day for not more than five (5) days each year) and at \$150. per week thereafter (\$30. per day). These charges are lower than DEALER's costs and are an accommodation.

20a. If during the first eight years of operation by the DISTRIBUTOR and through no fault, directly or indirectly, on his part, a Chain Store Organization discontinues business with the DEALER and consequently the DISTRIBUTOR—the DEALER agrees to reimburse the DISTRIBUTOR by giving him the equivalent new business or in lieu thereof so much of the cost of such Chain Organization's stops purchased by DISTRIBUTOR and serviced by him as the number of unexpired years bears to eight, i.e. If in 4th year, service is discontinued, DEALER will reimburse DISTRIBUTOR one-half ( $\frac{1}{2}$ ) original value of each store on route, if in 5th year, reimbursement shall be three-eighths ( $\frac{3}{8}$ ), etc.

20b. Where demolition of large areas take place, DISTRIBUTOR will notify us—we'll then attempt to get equivalent value or will amortize as above.

21. Dealer shall not be responsible for failure to deliver merchandise if cause is directly attributable to strikes, labor



*Employer's Exhibit 5-A*

troubles, lockouts, fire, accident, act of government, or of the public enemy, Act of God, or by any cause beyond its control.

22. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Closing date of this sale shall be 2:00 o'clock on the 12th day of May, 1967, at the office of Lorenz Schneider Co. Inc.,

LORENZ SCHNEIDER CO. INC.

By

**Employer's Exhibit 5-D**

THIS AGREEMENT made in New Hyde Park, Nassau County and State of New York, on the                      day of                      , 19                      , by and between LORENZ SCHNEIDER Co., Inc., a domestic corporation duly organized and existing under the Laws of the State of New York, and having its principal place of business at 2000 Plaza Avenue, New Hyde Park, Nassau County, State of New York, herein called the DEALER, and

hereinafter called the DISTRIBUTOR.

WITNESSETH :

WHEREAS, the DEALER is a franchised dealer for the five (5) Boroughs of the City of New York and for Nassau and Suffolk Counties on Long Island, State of New York for several specialty food products and related items (and has an established business with customers such as chain stores, co-operative associations and independently owned stores throughout this area), and

WHEREAS, the purchaser is desirous of becoming a DISTRIBUTOR for the sale of the products described above and upon the terms and conditions hereinafter set forth,

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The DEALER hereby sells to the DISTRIBUTOR \_\_\_\_\_  
of store customers in the County of \_\_\_\_\_ number \_\_\_\_\_ as per  
attached schedule, established by the DEALER for the pur-  
pose of continuing the sales in said \_\_\_\_\_  
\_\_\_\_\_ chain or ind.

*Employer's Exhibit 5-D*

stores of the products franchised to the DEALER and for such other products as may be added by the DEALER from time to time, and the purchaser agrees to buy the same,

- 1a. The SELLER represents the weekly business average as \$
- 1b. The purchase price to be paid by DISTRIBUTOR is \$
- 1c. The terms of payment are as follows:
 

Upon execution of this agreement	\$
Balance	\$

Balance of the amount for the route shall be amortized with an agreed plan to be paid off as quickly as possible depending upon the distributor's financial position and yield from route, but never to exceed twelve (12) years. This balance shall bear an interest rate of 6% first 5 years, 7% 6th and 7th year. Prevailing rate after 7th year, estimated at current rates and conditions. (With proper care and development of route, increased business and sell-offs make it easily possible to liquidate mortgage in five years).

Transferee (distributor) agrees to perfect such security interest by executing and delivering to Transferor (dealer) a Security Agreement and a Financing Statement, in accordance with the provisions of the Uniform Commercial Code, and all other instruments or documents as may be required by the Transferor. The filing fees thereof and reasonable attorney's fees shall be paid by the Transferee.

*Employer's Exhibit 5-D*

2. The DISTRIBUTOR agrees to purchase the route, including said number of customers, and good will, and agrees to use his best efforts to distribute, procure sales for, to obtain increased space, new accounts, to merchandise and otherwise to increase the volume of sales for the authorized franchised products of the DEALER without regard to fixed or bounded territory except that DISTRIBUTOR may not solicit accounts outside franchised area of DEALER (Dealer's area—5 Boroughs, Nassau and Suffolk Counties).

3. The DEALER agrees to furnish the DISTRIBUTOR with the initial set of route books and customer books, without charge, for the accounts of the above number of customers currently doing business with the DEALER.

4. The DEALER agrees to sell merchandise to the DISTRIBUTOR at prices listed for DISTRIBUTORS at any time. These will be supplied daily or weekly by DEALER.

5a. The DISTRIBUTOR shall pay the DEALER for all products purchased from the DEALER, as follows:

INDEPENDENT DISTRIBUTORS' merchandise must be paid for on Wednesday of each week for the preceding week. If not, further receipt of merchandise will be on a C.O.D. basis.

5b. The CHAIN STORE OPERATION is principally with charge accounts and little or no cash sales are made by the distributor. Due to the paying practices of all chains in the metropolitan area the DEALER will factor the Dis-



*Employer's Exhibit 5-D*

TRIBUTOR's receivables and will advance to him funds as will be agreed upon between the parties.

On the second week a settlement will be made of all amounts due to or from him on the accounts receivable sales exchanges turned into Lorenz Schneider for collection.

Most bonafide DISTRIBUTORS retail their merchandise and which results in a twenty (20%) percent profit (approximately) for sales to independent stores, and a twenty (20%) percent profit (approximately) less rebate, to chain stores. DISTRIBUTOR is free to establish his gross profits.

6. The DISTRIBUTOR agrees to maintain accurate route books at all times and accurate customers' books. This is for protection of DISTRIBUTOR and for evaluation of stops when selling off part of route, as well as for governmental tax examination purposes, or for purposes of adding trucks for added routes.

7. The DISTRIBUTOR shall be responsible for merchandise discounts or rebates to all those retailers who earn the same, said discounts are to be uniform with the DEALER's as required by F.T.C. In the event the DISTRIBUTOR loses an account through neglect of payment of rebate, said account will become an open account.

8. The DISTRIBUTOR agrees that the DEALER shall not be liable for any act or acts of the DISTRIBUTOR, nor shall the DISTRIBUTOR bind or attempt to bind the DEALER in any manner, and nothing herein contained shall be construed as creating the relationship of Employer and Employee between the parties, that the DISTRIBUTOR shall be deemed at all times to be an independent contractor.

*Employer's Exhibit 5-D*

9. The DISTRIBUTOR shall cause his name to be placed on his sales tickets, route number and initial on chain store pads.

10. In the event of a recoup by the DEALER for cause, the current rates based on weekly volume for repurchase shall apply. In the event that the DISTRIBUTOR desires to sell his route, or a segment thereof to any other DISTRIBUTOR, anytime to an accredited buyer, he may, at the same formula as used in this sale.

11. That in the event of the termination of this franchise by either party, it is understood that no complete settlement can be made, nor shall any complete settlement be made, until the DISTRIBUTOR has turned over to the PURCHASER all of his route books up to the date of termination, which route books shall cover a period of fifty-two (52) consecutive weeks prior to the termination of said franchise, which route books (and cards) shall thereupon become the sole property of the DEALER. FIVE HUNDRED (\$500) DOLLARS shall be held in escrow until final values are determined and all bills, rebates, charges are settled, and spoils picked up, but not longer than sixty (60) days.

12. New charge accounts and existing charge accounts from date hereof shall be responsibility of DISTRIBUTOR. *Central billing* accounts are the responsibility and liability of the manufacturer.

13. The DISTRIBUTOR shall purchase this exclusive right from the DEALER upon the following basis:

*Employer's Exhibit 5-D*

The DISTRIBUTOR shall pay the DEALER the sum of ONE THOUSAND (\$1,000) DOLLARS for each ONE HUNDRED (\$100) DOLLARS worth of business sales per week for the accounts set forth in SCHEDULE A, as averaged over the period of fifty-two (52) weeks prior to the date of purchase. This figure shall also apply proportionately to any fraction of said each ONE HUNDRED (\$100) DOLLARS worth of business sales.

39 Weeks—at the ratio of—	9 for 1
26 " — " " " " —	6 for 1
13 " — " " " " —	4 for 1
Less than 13 Weeks	—3 for 1

14. In the event that the DISTRIBUTOR wishes to resell the aforesaid route, he must do so upon the same terms and conditions upon which the same was originally purchased by the DISTRIBUTOR from the DEALER.

15. In order to protect the large number of DISTRIBUTORS, and in the event of the death of the DISTRIBUTOR, the Estate of the said DISTRIBUTOR, unless a member of family can operate route, must sell said right to said franchise to a third party or assign the same to the DEALER, or its designee, upon the same terms and conditions as in the case of the original sale. Such sale shall be binding as against the legal representatives, heirs and assigns of the DISTRIBUTOR.

16. The DEALER shall not terminate or cancel this franchise if the DISTRIBUTOR faithfully performs his duties hereunder, and this franchise shall continue in full force and

*Employer's Exhibit 5-D*

effect until terminated by either party for just cause as enumerated in paragraph 17 or upon notice by DISTRIBUTOR.

17. The DEALER may, upon five (5) days written notice, cancel this franchise for the following reasons:

- (A) The failure of the DISTRIBUTOR to make the payments due under the terms of the promissory note herein referred to.
- (B) The handling by the DISTRIBUTOR of items in addition to those which he may purchase from the DEALER, which are in direct competition with those already purchased.
- (C) Since chain stores or co-operative stores give authorizations for the specific items to be sold in each store, the sale of unauthorized items by any DISTRIBUTOR is prohibited, to avoid the elimination of DEALER'S items from such chain or co-operative stores as a penalty to the detriment of other DISTRIBUTORS.
- (D) The wilful neglect of the DISTRIBUTOR in properly serving his customers.

Any act deemed dishonest, to Customer or Dealer.

- (E) If the DISTRIBUTOR shall become incapacitated for a period of longer than ninety (90) days and shall be unable to supply someone sufficient and efficient enough to cover the route properly, then the DEALER shall have the right to repurchase said route under the same terms and conditions as above set forth.
- (F) For the benefit of all DISTRIBUTORS who may be involved, the failure of the DISTRIBUTOR to turn over



*Employer's Exhibit 5-D*

to the DEALER during the first week of each month the necessary records and rebate funds to cover any of the DISTRIBUTORS' accounts with a co-operative store or chain store and for which the DEALER is handling the rebating to said co-operative or chain store on behalf of the DISTRIBUTOR.

- (G) By the failure of the DISTRIBUTOR to supply the DEALER WITH the necessary information on the first day of each month, which is required for use by the DEALER in filling out reports for THE WISE POTATO CHIP COMPANY and other manufacturers, with which advertising contracts may be held. This, too, for benefit of all concerned.

18. If the DEALER shall sell or transfer his franchise or be replaced by another DEALER, the same shall not be deemed to annul this Agreement or interfere with the DISTRIBUTOR's exclusive rights herein set forth, and any successor DEALER shall be bound by the terms of this Agreement.

19. If during the first three (3) years of operation by the DISTRIBUTOR and through no fault, directly or indirectly, on his part, a Chain Store Organization discontinues business with the DEALER and consequently the DISTRIBUTOR—the DEALER agrees to reimburse the DISTRIBUTOR by giving him the equivalent new business or in lieu thereof so much of the cost of such Chain Organization's stops purchased by DISTRIBUTOR and serviced by him as the number of unexpired years bears to three. Rate of charge per stop would be  $33\frac{1}{3}\%$  per year for each of the three (3) years for all stops in chain, i.e. a stop cost \$600. originally and would be lost

*Employer's Exhibit 5-D*

after two (2) years. The purchaser would pay for the two (2) years at a rate of  $33\frac{1}{3}\%$  per year—or  $2 \times 33\frac{1}{3}\% = 66\frac{2}{3}\%$ ;  $66\frac{2}{3}\%$  of \$600. = \$400.00.

20. DEALER shall not be responsible for failure to deliver merchandise if cause is directly attributable to strikes, labor troubles, lockouts, fire, accident, act of government, or of the public enemy, Act of God, or by any cause beyond its control.

21. The DEALER agrees to carry a mortgage life insurance covering the remaining balances of the promissory note; premiums to be borne by DISTRIBUTOR. Application to be completed at closing of sale.

22. In the event of sell-off of a part of the route, all monies (100%) received therefrom must be applied against the remaining balance of the mortgage at that time.

23a. In the event of any disputes between the parties concerning meaning of language, the parties shall attempt to settle such controversy amicably.

23b. In the event such controversy cannot be settled amicably then the matter in dispute shall be submitted by either party to an arbitrator designated by the American Arbitration Association subject to its rules. The decision of such arbitrator shall be final and binding upon the parties hereto. Cost of arbitration to be borne by both parties.

24. In the event of sale of route or a recoup by DEALER, the DISTRIBUTOR agrees not to re-enter a business of dis-

*Employer's Exhibit 5-D*

tributing the same or like products for a period of one (1) year, to customers serviced by him.

25. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

26. The DISTRIBUTOR agrees to abide by the "Book of Procedures for Operating Distributor Routes".

27. Paragraphs #6 through #26 shall survive the closing of this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Closing date of this sale shall be \_\_\_\_\_ o'clock on the  
day of \_\_\_\_\_, 19\_\_\_\_, at the office of  
Lorenz Schneider Co. Inc. 2000 Plaza Avenue, New Hyde  
Park, N. Y.

LORENZ SCHNEIDER CO. INC.

By .....

.....  
Purchaser

In presence of

.....

**Employer's Exhibit 5-E**

[1]

THIS AGREEMENT made in New Hyde Park, Nassau County and State of New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between LORENZ SCHNEIDER Co., Inc., a domestic corporation duly organized and existing under the Laws of the State of New York, and having its principal place of business at 2000 Plaza Avenue, New Hyde Park, Nassau County, State of New York, herein called the DEALER, and

hereinafter called the DISTRIBUTOR.

**WITNESSETH :**

WHEREAS, the DEALER is a franchised dealer for the five (5) Boroughs of the City of New York and for Nassau and Suffolk Counties on Long Island, State of New York for several specialty food products and related items (and has an established business with customers such as chain stores, co-operative associations and independently owned stores throughout this area), and

WHEREAS, the purchaser is desirous of becoming a DISTRIBUTOR for the sale of the products described above and upon the terms and conditions hereinafter set forth,

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The DEALER hereby sells to the DISTRIBUTOR.....  
of store customers in the County of \_\_\_\_\_ number \_\_\_\_\_ as per  
attached schedule, established by the DEALER for the pur-  
pose of continuing the sales in said .....  
chain or ind.



*Employer's Exhibit 5-E*

stores of the products franchised to the DEALER and for such other products as may be added by the DEALER from time to time, and the purchaser agrees to buy the same,

- 1a. The SELLER represents the weekly business average as \$
- 1b. The purchase price to be paid by DISTRIBUTOR is \$
- 1c. The terms of payment are as follows:
 

Upon execution of this agreement	\$
Balance	\$

The unpaid balance of the purchase price shall be evidenced by a promissory note and secured by a security agreement (chattel mortgage) for a period not to exceed 15 years with interest at 4% for the first year, 5% for the second year, 6% for the third year and 7½% for every year thereafter. The unpaid balance shall be amortized over a period of twelve (12) years (144 months) and monthly principal payments plus interest will commence the first month of the fourth (4th) year of operation, or the first (1st) month after the down payment Bank loan is liquidated, whichever is earlier. Prior thereto, only interest payments shall be made weekly.

Transferee (distributor) agrees to perfect such security interest by executing and delivering to Transferor (dealer) a Security Agreement and a Financing Statement, in accordance with the provisions of the Uniform Commercial Code, and all other instruments or documents as may be required by the Transferor. The filing fees thereof and reasonable attorney's fees shall be paid by the Transferee.

*Employer's Exhibit 5-E*

2. The DISTRIBUTOR agrees to purchase the route, including said number of customers, and good will, and agrees to use his best efforts to distribute, procure sales for, to obtain increased space, new accounts, to merchandise and otherwise to increase the volume of sales for the authorized franchise products of the DEALER without regard to fixed or bounded territory except that DISTRIBUTOR may not solicit accounts outside franchised area of DEALER (Dealer's area —5 Boroughs, Nassau and Suffolk Counties).

3. The DEALER agrees to furnish the DISTRIBUTOR with the initial set of route books and customer books, without charge, for the accounts of the above number of customers currently doing business with the DEALER.

4. The DEALER agrees to sell merchandise to the DISTRIBUTOR at prices listed for DISTRIBUTORS at any time. These will be supplied daily [2] or weekly by DEALER.

5a. The DISTRIBUTOR shall pay the DEALER for all products purchased from the DEALER, as follows:

INDEPENDENT DISTRIBUTORS' merchandise must be paid for on Wednesday of each week for the preceding week. If not, further receipt of merchandise will be on a C.O.D. basis.

5b. The CHAIN STORE OPERATION is principally with charge accounts and little or no cash sales are made by the distributor. Due to the paying practices of all chains in the metropolitan area the DEALER will factor the DISTRIBUTOR's receivables and will advance to him funds as will be agreed upon between the parties.

*Employer's Exhibit 5-E*

On the second week a settlement will be made of all amounts due to or from him on the accounts receivable sales exchanges turned into Lorenze Schneider for collection.

Most bonafide DISTRIBUTORS retail their merchandise and which results in a twenty (20%) percent profit (approximately) for sales to independent stores, and a twenty (20%) percent profit (approximately) less rebate, to chain stores. DISTRIBUTOR is free to establish his gross profits.

6. The DISTRIBUTOR agrees to maintain accurate route books at all times and accurate customers' books. This is for protection of DISTRIBUTOR and for evaluation of stops when selling off part of route, as well as for governmental tax examination purposes, or for purposes of adding trucks for added routes.

7. The DISTRIBUTOR shall be responsible for merchandise discounts or rebates to all those retailers who earn the same, said discounts are to be uniform with the DEALER's as required by F.T.C. In the event the DISTRIBUTOR loses an account through neglect of payment of rebate, said account will become an open account.

8. The DISTRIBUTOR agrees that the DEALER shall not be liable for any act or acts of the DISTRIBUTOR, nor shall the DISTRIBUTOR bind or attempt to bind the DEALER in any manner, and nothing herein contained shall be construed as creating the relationship of Employer and Employee between the parties, that the DISTRIBUTOR shall be deemed at all times to be an independent contractor.

*Employer's Exhibit 5-E*

9. The DISTRIBUTOR shall cause his name to be placed on his sales tickets, route number and initial on chain store pads.

10. In the event of a recoup by the DEALER for cause, the current rates based on weekly volume for repurchase shall apply. In the event that the DISTRIBUTOR desires to sell his route, or a segment thereof to any other DISTRIBUTOR, any-time to an accredited buyer, he may, at the same formula as used in this sale.

11. That in the event of the termination of this franchise by either party, it is understood that no complete settlement can be made, nor shall any complete settlement be made, until the DISTRIBUTOR has turned over to the PURCHASER all of his route books up to the date of termination, which route books shall cover a period of fifty-two (52) consecutive weeks prior to the termination of said franchise, which route books (and cards) shall thereupon become the sole property of the DEALER. FIVE HUNDRED (\$500) DOLLARS shall be held in escrow until final values are determined and all bills, rebates, charges are settled, and spoils picked up, but not longer than sixty (60) days.

12. New charge accounts and existing charge accounts from date hereof shall be responsibility of DISTRIBUTOR. *Central billing* accounts are the responsibility and liability of the manufacturer.

13. The DISTRIBUTOR shall purchase this exclusive right from the DEALER upon the following basis:



*Employer's Exhibit 5-E*

The DISTRIBUTOR shall pay the DEALER the sum of ONE THOUSAND (\$1,000) DOLLARS for each ONE HUNDRED [3] (\$100) DOLLARS worth of business sales per week for the accounts set forth in SCHEDULE A, as averaged over the period of fifty-two (52) weeks prior to the date of purchase. This figure shall also apply proportionately to any fraction of said each ONE HUNDRED (\$100) DOLLARS worth of business sales.

39 Weeks—at the ratio of—	9 for 1
26   "       "       "       "       "	6 for 1
13   "       "       "       "       "	4 for 1
Less than 13 Weeks	3 for 1

14. In the event that the DISTRIBUTOR wishes to resell the aforesaid route, he must do so upon the same terms and conditions upon which the same was originally purchased by the DISTRIBUTOR from the DEALER.

15. In order to protect the large number of DISTRIBUTORS, and in the event of the death of the DISTRIBUTOR, the Estate of the said DISTRIBUTOR, unless a member of family can operate route, must sell said right to said franchise to a third party or assign the same to the DEALER, or its designee, upon the same terms and conditions as in the case of the original sale. Such sale shall be binding as against the legal representatives, heirs and assigns of the DISTRIBUTOR.

16. The DEALER shall not terminate or cancel this franchise if the DISTRIBUTOR faithfully performs his duties hereunder, and this franchise shall continue in full force

*Employer's Exhibit 5-E*

and effect until terminated by either party for just cause as enumerated in paragraph 17 or upon notice by DISTRIBUTOR.

17. The DEALER may, upon five (5) days written notice, cancel this franchise for the following reasons:

- (A) The failure of the DISTRIBUTOR to make the payments due under the terms of the promissory note herein referred to.
- (B) The handling by the DISTRIBUTOR of items in addition to those which he may purchase from the DEALER, which are in direct competition with those already purchased.
- (C) Since chain stores or co-operative stores give authorizations for the specific items to be sold in each store, the sale of unauthorized items by any DISTRIBUTOR is prohibited, to avoid the elimination of DEALER's items from such chain or co-operative stores as a penalty to the detriment of other DISTRIBUTORS.
- (D) The wilful neglect of the DISTRIBUTOR in properly serving his customers.

Any act deemed dishonest, to Customer or Dealer.

- (E) If the DISTRIBUTOR shall become incapacitated for a period of longer than ninety (90) days and shall be unable to supply someone sufficient and efficient enough to cover the route properly, then the DEALER shall have the right to repurchase said route under the same terms and conditions as above set forth.

*Employer's Exhibit 5-E*

- (F) For the benefit of all DISTRIBUTORS who may be involved, the failure of the DISTRIBUTOR to turn over to the DEALER during the first week of each month the necessary records and rebate funds to cover any of the DISTRIBUTORS' accounts with a co-operative store or chain store and for which the DEALER is handling the rebating to said co-operative or chain store on behalf of the DISTRIBUTOR.
- (G) By the failure of the DISTRIBUTOR to supply the DEALER WITH the necessary information on the first day of each month, which is required for use by the DEALER in filling out reports for THE WISE POTATO CHIP COMPANY and other manufacturers, with which advertising contracts may be held. This, too, for the benefit of all concerned.

[4]

18. If the DEALER shall sell or transfer his franchise or be replaced by another DEALER, the same shall not be deemed to annul this Agreement or interfere with the DISTRIBUTOR's exclusive rights herein set forth, and any successor DEALER shall be bound by the terms of this Agreement.

19. If during the first three (3) years of operation by the DISTRIBUTOR and through no fault, directly or indirectly, on his part, a Chain Store Organization discontinues business with the DEALER and consequently the DISTRIBUTOR—the DEALER agrees to reimburse the DISTRIBUTOR by giving him the equivalent new business or in lieu thereof so much of the cost of such Chain Organization's stops purchased by DISTRIBUTOR and serviced by him as the number of unexpired years bears to three. Rate of charge per stop would

*Employer's Exhibit 5-E*

be  $33\frac{1}{3}\%$  per year for each of the three (3) years for all stops in chain, i.e. a stop cost \$600. originally and would be lost after two (2) years. The purchaser would pay for the two (2) years at a rate of  $33\frac{1}{3}\%$  per year—or  $2 \times 33\frac{1}{3}\% = 66\frac{2}{3}\%$ ;  $66\frac{2}{3}\%$  of \$600. = \$400.00.

20. DEALER shall not be responsible for failure to deliver merchandise if cause is directly attributable to strikes, labor troubles, lockouts, fire, accident, act of government, or of the public enemy, Act of God, or by any cause beyond its control.

21. The DEALER agrees to carry a mortgage life insurance covering the remaining balances of the promissory note; premiums to be borne by DISTRIBUTOR. Application to be completed at closing of sale.

22. In the event of sell-off of a part of the route, all monies (100%) received therefrom must be applied against the remaining balance of the mortgage at that time.

23a. In the event of any disputes between the parties concerning meaning of language, the parties shall attempt to settle such controversy amicably.

23b. In the event such controversy cannot be settled amicably then the matter in dispute shall be submitted by either party to an arbitrator designated by the American Arbitration Association subject to its rules. The decision of such arbitrator shall be final and binding upon the parties hereto. Cost of arbitration to be borne by both parties.



*Employer's Exhibit 5-E*

24. In the event of sale of route or a recoup by DEALER, the DISTRIBUTOR agrees not to re-enter a business of distributing the same or like products for a period of one (1) year, to customers serviced by him.

25. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

26. The DISTRIBUTOR agrees to abide by the "Book of Procedures for Operating Distributor Routes".

27. Paragraphs #6 through #26 shall survive the closing of this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Closing date of this sale shall be \_\_\_\_\_ o'clock  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
at the office of Lorenz Schneider Co. Inc., 2000 Plaza Avenue, New Hyde Park, N. Y.

LORENZ SCHNEIDER CO. INC.

By \_\_\_\_\_

\_\_\_\_\_  
Purchaser

In presence of

\_\_\_\_\_

**Employer's Exhibit 5-G**

## DISTRIBUTORS CONTRACTS—EXHIBIT 5 A

<i>Distributor</i>	<i>Date of Contract Closing Date</i>
John Stanislaus, Jr.	February 24, 1967
Dirk Vanderlee	March 3, 1967
Warren J. Klaus	April 21, 1967
Louis Sica	April 14, 1967
Joseph Santomero, Jr.	April 14, 1967
Walter C. Otto	May 12, 1967

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*Employer's Exhibit 5-G*

DISTRIBUTORS CONTRACTS—EXHIBIT 5 B

<i>Distributor</i>	<i>Date of Contract Closing Date</i>
Harry Luerssen	July 21, 1969
Heng E. To	July 21, 1969

*Employer's Exhibit 5-G*

## DISTRIBUTORS CONTRACTS—EXHIBIT 5 C

<i>Distributor</i>	<i>Date of Contract Closing Date</i>
John G. Louis III	October 18, 1968
Charles L. Moser	November 1, 1968
George L. Bush	May 12, 1969
Donald W. Hartung	June 30, 1969



*Employer's Exhibit 5-G*

## DISTRIBUTORS CONTRACTS—EXHIBIT 5 D

<i>Distributor</i>	<i>Date of Contract Closing Date</i>
Sheldon Skolnick	February 2, 1970
William E. Blatt	May 4, 1970
Warren J. Hance	June 9, 1970
Frank J. La Cascia	July 8, 1970
Robert J. Krug	December 1, 1970
Louis J. Pappas	March 15, 1971
Raymond J. Volz	April 8, 1971
Thomas Judge	June 29, 1971
Kenneth A. Sullivan	June 26, 1971
Kenneth R. Mulligan	February 3, 1972
Hector Gales	March 21, 1972
Edward Fendt	April 14, 1972

*Employer's Exhibit 5-G*

## DISTRIBUTORS CONTRACTS—EXHIBIT 5 E

<i>Distributor</i>	<i>Date of Contract Closing Date</i>
Frederick R. Mockel	November 26, 1971
Joseph A. Breier	December 9, 1971
Richard Brothers	December 16, 1971
John Rosalia	February 3, 1972
Roy Mockel	February 10, 1972
William C. Ramski	February 10, 1972
Richard J. Schlichting	February 10, 1972

*Employer's Exhibit 5-G*

## DISTRIBUTORS CONTRACTS—EXHIBIT 5 F

<i>Distributor</i>	<i>Date of Contract Closing Date</i>
John Spiller	June 2, 1967
Albert Ehlsam	June 2, 1967
Richard Ubert	June 2, 1967
Roger N. Kresge	June 2, 1967
Joseph G. Brintz	June 2, 1967
Joseph E. Johnson	June 16, 1967
Marvin Friedman	June 16, 1967
Salvatore P. De Rasmio	June 23, 1967
Joseph Del Prete, Jr.	June 23, 1967
Harvey A. Katz	June 30, 1967
Salvatore Guddo	July 21, 1967
John T. Schmitt	July 21, 1967
John E. Biggs	July 21, 1967
Bernhard Steil, Jr.	July 31, 1967
Robert E. Sebastian	August 1, 1967
Joseph M. Formichella	November 3, 1967
Louis V. Ferrara	July 26, 1968
Arthur R. Wallace	August 2, 1968
John A. Roach	August 2, 1968
Richard A. Matich	August 2, 1968
Lawrence A. Mancini	September 6, 1968

**Employer's Exhibit 6**

AGREEMENT made this                  day of                  1972,  
between SCHNEIDER TRUCKS, INC. a domestic corporation  
having its principal place of business at 2000 Plaza Avenue,  
New Hyde Park, N.Y., hereinafter called the LESSOR, and  
   residing at  
hereinafter called the LESSEE.

1. The LESSOR hereby leases to the LESSEE, and the LESSEE hereby hires from the LESSOR, subject to the terms and conditions hereinafter set forth, one 19..... foot truck, Serial No. .... with accessories, which the LESSEE has inspected and acknowledges to be in good working condition.

2. The term of this lease shall be for one (1) year, commencing \_\_\_\_\_, 1972, and shall be automatically renewed for successive periods of one (1) year each unless either party shall give notice by registered or certified mail at least thirty (30) days prior to any expiration date of intention not to renew said lease.

3. The LESSEE shall pay to the LESSOR a weekly rental of \$ \_\_\_\_\_ for the lease of said truck, commencing \_\_\_\_\_, 1972 and thereafter on the same day of each and every succeeding week, for the term of said lease. Lease is automatically terminated if payments are not made on time.

4. As an inducement to the LESSEE to properly care for said truck, to maintain minimum wear and tear, and to



*Employer's Exhibit 6*

avoid accidents and damage to said truck or other property, the LESSOR may make an allowance to the LESSEE at the termination of this lease of up to seven dollars and fifty cents (\$7.50) weekly, to be paid at the end of the term of this lease. There shall be no proportionate allowance for any period less than one (1) year. The amount of the allowance, if any, to be paid to the LESSEE shall be in the sole discretion of the LESSOR and its judgment shall be final and binding and not subject to review.

5. The LESSOR shall pay for registration plates and all expenses in connection with the operation, maintenance and upkeep of said truck, including liability insurance for personal injuries for \$250,000.00 to any one person and \$1,000,000.00 for any one accident and \$10,000.00 for property damages. As a condition of the LESSOR providing such insurance coverage for the LESSEE at its own cost and expense, it is agreed:

(a) That the LESSEE forthwith notify the LESSOR, in writing, of any accidents or collisions, and give the LESSOR in the aforesaid notice full and complete details of any accident or collision.

(b) That the LESSEE properly deliver to the LESSOR any and all papers, notices and documents, whatsoever, served upon the LESSEE, or its duly authorized agent, in any claim, suit, action or proceeding commenced, or threatened to be commenced against the LESSEE, and covered by the liability assumed by the LESSOR.

(c) That the LESSEE shall co-operate sincerely and faithfully with the LESSOR, in every way within the

*Employer's Exhibit 6*

LESSEE's power, in prosecution and/or defense of suits, actions or proceedings, and suits, actions or proceedings for the recovery of damages to the truck hereby leased.

6. The LESSEE shall be responsible for the payment of the following:

- (a) Bridge, ferry, tunnel and similar tolls and charges.
- (b) Federal, State and Municipal taxes, assessments and other charges not otherwise provided for herein which now or hereafter may be imposed in the operation of said truck on the highways.
- (c) Fines and penalties for speeding, parking, reckless or careless driving, overload, overlength, overweight, or for any other violation of Federal, State or Municipal ordinances or regulations.
- (d) Sales Tax and Federal Transportation Tax, if any, now or hereafter imposed.
- (e) In the event LESSOR makes any payment provided for in this paragraph, which is required to be paid by the LESSEE, the LESSEE shall immediately reimburse the LESSOR to the extent of such payment.

7. The LESSEE shall be liable for any damage to the building occupied by the LESSOR and for damage to any personal property located thereat. The LESSEE shall also be responsible for damage to the truck leased to him caused by overloading beyond its rated service capacity.

*Employer's Exhibit 6*

8. Except for substitution of spare tires, the LESSEE shall not repair said truck if disabled, but shall immediately notify the LESSOR who shall repair the same or substitute another truck of the same or substantially similar capacity and such substituted truck shall be subject to all the terms and conditions of this agreement.

9. The LESSEE shall use said truck only on weekdays, and only in the regular course of his snack food sales in his regular territory. The LESSEE shall return said truck at the end of each day's business to a garage designated or consented to by the LESSOR.

10. (a) The LESSEE shall observe all safety rules and other requirements of all regulatory bodies having jurisdiction and shall not use or permit said truck to be used in violation thereof.

(b) Unless otherwise provided herein, the LESSEE shall operate said truck.

(c) If any chauffeur employed by LESSEE to drive said truck is objectionable to the LESSOR, the LESSEE shall remove him and substitute another in his place.

(d) The LESSEE shall neither offer to accept passengers nor allow any riders to be carried in said truck, except a bonafide helper hired by the LESSEE, who must be over 16 years of age, covered by the LESSEE with all insurance required by law, and for whose employment the LESSEE obtains prior written approval from the LESSOR.

(e) The LESSEE shall report minor or emergency repairs daily and shall return truck cards to the LESSOR weekly.

*Employer's Exhibit 6*

11. In the event of labor trouble, strikes, lockout, fire, accident, act of God, government or of the public enemy, or any cause unavoidable or beyond its control, the LESSOR shall not be liable to the LESSEE.

12. In the event the LESSEE becomes insolvent, makes an assignment for the benefit of creditors, or is adjudicated a bankrupt or a Receiver or Trustee is appointed for him, or should the LESSEE fail to make any payment required to be made by him pursuant to this lease or should he breach any of the terms or conditions hereof, the LESSOR may, at its election, terminate this lease forthwith by serving written notice upon the LESSEE to that effect, and the LESSOR may take or retain possession of said truck and for such purpose, may enter peacefully upon any premises where the same may be, without being liable to the LESSEE in any manner whatsoever, and the LESSEE shall remain liable for any unpaid charges that may be due and any damages sustained by LESSOR, including costs of re-possession and reasonable attorney's fees.

13. Forbearance on the part of the LESSOR to exercise any right or remedy available upon LESSEE's breach of the terms, covenants and conditions of this lease or LESSOR's failure to demand the punctual performance thereof shall not be deemed a waiver of:

- (a) such right or remedy or
- (b) the requirement of punctual performance or
- (c) any subsequent breach or default on the part of the LESSEE.



*Employer's Exhibit 6*

14. It is understood and agreed that this agreement creates a lease or bailment only, of the said truck and accessories and not a sale thereof or the creation of a security interest therein. The LESSOR shall remain the sole owner of said truck and accessories and nothing contained therein or the payment of rent hereunder shall enable the LESSEE to acquire any right, title or other interest in or to the same other than that of a bailee for hire.

15. (a) Neither this lease nor the LESSEE's rights hereunder shall be assignable by the LESSEE without prior written consent of the LESSOR. In the event that the LESSOR grants such consent, the assignee shall be bound by the terms, covenants and conditions of this lease on the LESSEE's part to be performed.

(b) The LESSOR shall have the right to sell or assign this lease, including its right, title and interest to said truck and accessories and the rent reserved herein. The assignee shall thereupon acquire all of the rights and remedies possessed by or available to the LESSOR.

16. All notices required to be given shall be sent by registered or certified mail directed to the address of the other party hereinabove stated.

17. Upon the termination of this lease, by the expiration of its term or otherwise, the LESSEE agrees to return said truck and accessories to the LESSOR, in the same condition, except for reasonable wear and tear.

*Employer's Exhibit 6*

18. This instrument contains the entire agreement between the parties and may not be amended or altered except in writing, signed by both parties. This agreement shall be binding upon the parties, their respective heirs, executors, administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

SCHNEIDER TRUCKS, INC.

By.....

LESSOR

By.....

LESSEE

In presence of:

.....

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**Employer's Exhibit 12**

**PROCEDURES FOR  
OPERATING INDEPENDENT  
DISTRIBUTOR ROUTES**

**LORENZ SCHNEIDER CO., INC.**

*Employer's Exhibit 12*

For some twenty years, Lorenz Schneider Co., Inc. has had franchises from several manufacturers in which the five boroughs of New York and the Counties of Nassau and Suffolk are set aside, for its exclusive promotion of sales, marketing and distribution of the products of these manufacturers, have been made available to select entrepreneurs.

The franchises permit the delegation of sub-franchises in the same areas, to distributors whether independent operators (single route), or owners of several routes (multiple operators). The territory is covered by more than 100 trucks, each properly painted and bearing the names of the principal or manufacturers as well as his or trade names. These are rolling advertisements of your products.

In order to continue your growth and expansion, and in order to assist each distributor, the following Procedures have been developed by the early distributors. These are intended to cover most of the general conditions and situations that have been experienced in their many years of operation. It is believed that these are fair and equitable and assures each distributor of continuous growth and success. The underlying philosophy is that the good of the majority should prevail. It must be remembered that our territory is in a state of constant change, economically, socially and structurally. We, too, must be flexible enough to keep up with these changes. Therefore, these Procedures will be amended, with the help of distributors.

New situations which arise and which are not covered by these Procedures will be investigated thoroughly and the appropriate amendments will be added or deletions made to conform with the new set of findings.



*Employer's Exhibit 12*

The conclusions, with the concurrence by the distributors shall be made final and because of the historical background these Procedures are binding upon existing distributors and upon any new ones who purchase a route or routes from existing distributors.

[1]

1. Each distributor may handle all of the items which, from time to time, will be within the franchises. Products, other than those of your manufacturers, must be approved by the dealer in writing whether in direct competition or not. Consideration will be given and consent will not be withheld unreasonably.

Presently, there are more than 120 items made available by the manufacturers for your resale. This number of products exceeds the average for a route sales distributor in the food industry.

This is for the protection of the majority of independent distributors, under franchises, who would suffer excessive loss.

2. Each distributor must strive to obtain a reasonable increase in annual sales volume. This is a moral responsibility due the manufacturers in return for the exclusive franchises offered.

3. The distributor will sell to retail stores or to institutional accounts and may not resell to a sub-jobber or other distributors not covered by our franchises.

4. It is recommended that all distributors conform to the suggested prices. Since all independent distributors are

*Employer's Exhibit 12*

an integral part of the manufacturers' franchises, to conform with the Robinson-Patman Act, it will be necessary that they offer the same discounts to all of their outlets.

5. Credit for merchandise returned is given only for that portion of the merchandise which can be clearly earmarked as damaged because of *manufacturer's defects*.

6. If a sale is contemplated by a distributor to an individual or corporation, the dealer reserves the right to check the character, credit and background of such prospective purchaser to help in making a final determination as to whether the transaction should be consummated. This evaluation of character and financial responsibility is made to protect the property rights, and large investment of all of the distributors within our franchise who might otherwise be adversely affected financially and economically.

7. A distributor is permitted to give away free merchandise as a gift or contribution to a charity, charitable institution or similar organization. These usually are tax deductible.

8. We have found it worthwhile to create forms of contests from time to time to promote distributors' sales. Many multiple distributors do likewise for their salesmen. When manufacturers conduct contests, they include the salesmen working for such multiple distributors.

[2]

9. Supervision of your routes by yourself or your agents, when two or more routes are operated, is recommended.

*Employer's Exhibit 12*

10. The use of route books is, perhaps, the most important part of your business. By their use, your customers will receive better service since these records contain a complete history of each store's needs and potential.

These books are important, too, for the reason that illness or death might require the running of the route by a substitute who will not know the stops nor the items for any particular stop unless a route sheet is available. Without them, he would not be able to render your accounts the services to which they had been accustomed.

We shall be happy to cooperate by furnishing the route book to you at our cost, if you so desire.

11. In conformance with good business practices and for inspection purposes by Federal, State and Municipal authorities, it is necessary that sales tickets indicating the name or trade name of the distributor, the address and telephone number be printed in triplicate (at the minimum, in duplicate). The sales tickets are also useful as records when, either the manufacturers and/or the dealer has sales promotions, contests or prize awards.

12. Weekly service calls on the trade for 52 weeks each year is a *MUST* to obtain your maximum volume and retain your display places in the store. Two-a-week and three-a-week service increases volume in trafficked outlets.

13. Trucks used by the distributor must conform to one of several color schemes of the manufacturers, and each truck should bear the decals furnished. It is obvious that the trucks as well as you and your men are living adver-

*Employer's Exhibit 12*

tisements of the products. It, therefore, behooves each distributor to keep his truck neat and clean (a Board of Health rule).

14. To facilitate prompt delivery to distributors of needed merchandise, and because of the large number of distributors to be served, it becomes necessary to schedule dates in which to telephone orders and dates in which to effect deliveries of such orders. These schedules are available to you.

To accommodate those distributors who prefer deliveries to their warehouses on Saturday, this can be arranged.

15. All invoices must be paid within 5 days from the date of each delivery. The reason for this becomes very apparent when one realizes the amount of money necessarily involved to carry distributors' accounts for periods longer than 5 days. Manufacturers insist upon payments from us within 5 days. Repeated delinquency can result in C.O.D. shipments only.

[3]

16. ADVERTISING

- A. To minimize the costs of advertising in the classified telephone and other commercial directories, the dealer will place its own general advertisement and notify each distributor of any inquiries it receives.

The inserts by the dealer do not preclude any distributor from placing any advertisement on his own behalf if he so desires.

- B. Information with reference to rebate policies, advertising contracts, etc. will be found in the dis-



*Employer's Exhibit 12*

tributors' manual. Any specific questions can be answered by your field representative or the dealer.

**17. UNIFORMS**

Our distributors receive immediate acknowledgment through the use of uniforms and their neatness and cleanliness. Chain stores and owners of outlets look to uniforms of vendors for reliability, security, and general recognition.

**18. WAREHOUSE**

The Board of Health has standards for the storage of food stuffs. It is recommended that these be complied with.

It is strongly urged that spoiled merchandise and broken cartons be disposed of weekly to avoid creating situations which could result in the issuance of a summons for violations.

19. Racks, stands, and gondola shelving are tools for the displays of snack foods in the stops served by distributors. To aid in the placement of such racks and stands, and to obtain the co-operation of store owners and managers in obtaining strategic locations and added space, field representatives and promotional men will be available, from time to time, to each distributor to achieve these ends, at his request. The racks and stands necessary for the expansion of the distributors' sales are available at the warehouse of the dealer, if desired, and are billed at cost under separate invoices. The dealers have public liability

*Employer's Exhibit 12*

insurance covering the potential damage caused by these stands as part of its comprehensive policy. It might be wise for the distributor to consult with his insurance agent to determine whether such insurance should be included by his liability carrier.

All products presently available are 'impulse' purchases by consumers. These are backed up by point-of-sale pieces, shelf talkers, etc.

Since advertising media are a necessary concomitant for the increase of sales, such adjuncts are furnished to the distributor by [4] manufacturers, with suggestions for proper placements and usages that will result in greater spot sales. You will be assisted by personnel to place the material properly. Periodic reports are submitted to the distributor with recommendations for the proper placement of such new material and the elimination of outdated signs and point-of-sale pieces.

20. Promotional salesmen play an important role in your business. They are highly trained salesmen available to assist you in obtaining additional sales and in the opening of new accounts. Such men are furnished to all distributors by both dealers and manufacturers, from time to time, on a rotated basis. It is important that the schedules for these aids be kept, so that loss of time can be held to a minimum and the efficiency of those men be kept at peak performance.

A report on the achievements of the promotional man and sales made by him will be turned over to you. It must be appreciated that this extra service is a very costly one, yet it is furnished free of charge to franchised distributors. Your co-operation means fruitful results.

*Employer's Exhibit 12*

The dealer makes available to the distributors, a Promotional Truck Program. This is another complete and highly valuable service. Full details of its operation can be obtained from your field representative.

21. A majority of our distributors have expressed their desires to have new distributors trained by dealer personnel rather than by a distributor selling all or part of his route. Their reasoning is that the dealer's men are not only more proficient, knowledgeable and able to teach a new distributor, but also undoubtedly have a greater interest to teach the new men correctly, the various procedures which are part and parcel of the distributing business. The cost of that service at prevailing rates will be borne by the selling distributor. Such rates are posted.

22. In order that the continued good will of all customers be sustained, it is necessary that proper attention be given to servicing accounts. This insures the continued expansion of your sales. Stores must be served at least once each week, and for larger independent stores and chains, as many more times each week as is necessary to keep the stands, racks and gondolas adequately supplied with fresh merchandise.

Because of the semi-perishable nature of our franchised products, i.e., spoilability or rancidity, when exposed to steam pipes or hot air ventilators; rancidity, when merchandise because of failure to roll or rotate exceeds, in time, shelf life as indicated by manufacturers, it behooves all distributors to exercise great care in the display of their merchandise.

*Employer's Exhibit 12*

Nothing tastes worse to a consumer than a rancid product and [5] nothing loses a consumer's loyalty more quickly than a repeated experience.

Codes are provided by manufacturers to preclude this complaint.

During surveys, spot checks shall be made and results transmitted.

23. Established and new account protection

- a) Stores not presently sold or registered with the dealer may be solicited and the account opened.

To avoid the ill will engendered when the customers of one distributor are sold by another distributor, whether inadvertently or deliberately, and to protect those who supply a list of accounts served at least once a week, to the dealer, notices of such openings should be mailed within 7 days giving the store name and location.

- b) It is common knowledge that mergers, the creation of new partnerships, the expansion of one to several stores, the formation of new co-ops, etc. take place constantly. Because of these constant changes, in an effort to prevent conflicts, it is the consensus of opinion of our distributors that the following principles should govern.

- 1. Should one distributor sell or exchange an account or accounts with another distributor, the weekly average of sales of such accounts should be used as a measure of value and such differ-



*Employer's Exhibit 12*

ences in amounts should be paid for at the current ratio herein provided in the Procedures.

The notification of such exchanges or sales, should be mailed to the dealer for proper entry on its records. Since the dealer has an over-all knowledge of the various areas served by all of the distributors, it will gladly assist in making such transfers by supplying advice and counsel if requested.

2. When an account reopens after having been closed for any reason, regardless of change in proprietorship, it will remain the account of the distributor serving the location prior to its closing.
3. If the account is not served within seven (7) days after reopening, it shall be considered an OPEN account—and then the first distributor to sell merchandise to the store with a bona fide sale will receive it as a permanent account.
4. If an account moved from the present location and re- [6] located within 1,000 feet of the previous location, it will remain with the distributor serving it prior to its moving—PROVIDING the original location does not maintain the same business with snack items.
  - a) If the original location opens up at a later date with snack items, this location will be an open account.

*Employer's Exhibit 12*

- b) If the retailer decides to sell his business to a new owner, this location will remain with the distributor who is serving him.
  - c) If the retailer should decide to operate two stores within 1,000 feet—the original location shall belong to the distributor who is serving him—and the NEW LOCATION would be considered an open account, and the first distributor to sell merchandise in the store with a bona fide sale would receive it as a permanent account.
5. If a distributor does not make a sale to an existing account for 30 days, this would be considered a neglect of service. It, therefore, becomes an open account for any other distributor except, in those situations involving unreasonable demands by storekeepers, strikes, litigation preventing the distributor from servicing his customer, fires, etc.

Seasonal business (summer accounts, fairs, arenas, race tracks, exhibits, etc.) is also excluded from the 30 day rule.

6. It must be appreciated that all distributors work under a franchise and any dishonest acts by one distributor can cause a bad reputation that will reflect itself on all other distributors with possible loss of sales and a reduced equity value of their business. Consequently, any act of dishonesty, larceny or other reprehensible

*Employer's Exhibit 12*

conduct shall be cause for the recoup of the route or sale to a third party of the individual distributor route within 30 days from discovery of such act or conduct.

Whenever any distributor has been accused of these aforementioned acts, the situation will be thoroughly investigated and, if the distributor is found at fault, it will cause the termination of the supply of merchandise to him and cessation of all business transactions.

7. Where a distributor makes a sale to a customer of another distributor, he shall be obliged to refund the profit of [7] such sale to the other distributor upon written notice by the dealer.

#### 24. CHAIN STORE ROUTES

Chain store selling is different in method from that of selling to independent outlets. Each chain has its own special requirements as to how and when it wants to be billed for sales to its various branches. The central offices of each chain also determine what items are to be sold in each store, and permission to sell such items is sent to the dealer's office in writing, who, in turn, will notify all distributors involved. Because of the special needs of servicing chains, separate distributor routes are established to enable specialization in the sale to chain stores only.

A chain authorization book is supplied by the dealer to those distributors serving chain stores to give specific information as to what items each store in a chain has been

*Employer's Exhibit 12*

authorized by Headquarters and which may be sold and the specific methods of billing for such items. For example:

- A. Exchange Accounts—A dealer's sales pad is used and the sales tickets are mailed to the dealer with the proper forms, given to the distributor to accompany them.
- B. 1. Central billing accounts—either an Old London or Quinlan pad is used. The Yellow and Pink copies of each pad are mailed to each manufacturer. The tissue copies, with the proper form to accompany them, are mailed to the dealer.
- 2. When the Wise sales pad is used, the Yellow and Pink copies are mailed to Wise in special envelopes provided and the tissue copy is sent to the dealer with the necessary form to accompany them.

To avoid unnecessary delays in the receipt of credits due you, it is strongly urged that the sales slips be processed and mailed promptly after the close of business each week.

## 25. MIXED ROUTES

Many business endeavors have become highly specialized during the past 20 years. In our industry, we have become specialists in the field of snack distribution. It has been found, through past experience, that the separation of chain store business from the independent type of outlet works to the financial advantage of each group of such distributors.



*Employer's Exhibit 12*

In addition, mixed routes have other serious problems—maintain- [8] ing authorization charts for chain stores (strict adherence to items—substitutions prohibited)—use of as many as 5 sales books, central billing, etc.—difference stock requirements, etc.

Because of the problems involved in attempting to operate a mixed route, it has been found more profitable to operate a straight chain or independent route. It is, therefore, recommended that new accounts be solicited within the category currently being serviced.

Those, at present, who have integrated routes, will have the dealer's help in separating and/or either selling or purchasing stops to round out their businesses. A reasonable time will be given in order to accomplish this separation in an orderly manner.

#### 26. STORE RE-OPENINGS

In those cases where a store closes and is subsequently re-opened, at the specific request of a distributor, it will be set up properly by a dealer field representative and then turned over to the distributor who formerly served the store at a charge of 20% of opening order plus the cost of stands or other merchandising materials used in connection with such re-opening.

27. It is understood that failure to give service in our business can cause the downfall of a profitable route. For this reason, any time a distributor, who might be ill, or for whatever other cause, cannot cover his route, the dealer will furnish a salesman for the necessary day or days at

*Employer's Exhibit 12*

the prevailing posted rates. This charge does not actually cover the costs to the dealer for this service. It is extended only as a means of assisting a distributor to maintain his customers and to protect the value of the route. When a salesman is needed, the following procedure is to be followed:

- a) In the event of illness, notice to the dealer should be as early as possible.
- b) Advance vacation requests will be accepted once a year. Distributors will be notified in advance. Requests will be granted on the basis of available manpower to run routes.
- c) The probable anticipated time required for the use of the salesman.
- d) Have somebody responsible present when the dealer's promotional salesman arrives to verify the inventory on the truck and warehouse before he starts and when he finishes. If this is not done, our promotional salesman cannot be held liable for inventory differences.
- e) Have the route books, with full directions, customer books, instructions for depositing daily receipts and all other needed details up to date and ready for the promotional salesman. If instructions are not complete we will not accept responsibility of running route.

[9]

28. If a distributor desires to retain the services of a dealer's promotional salesman to render service on one of his

*Employer's Exhibit 12*

routes as a result of illness, truck breakdown, vacations, or other circumstances, the following rates will be charged:

- a) \$26.00 per day for the first 5 days of hire in a calendar year.
  - 1. These days are to be counted cumulatively.
- b) For each day beyond a total of 5 during the calendar year, the daily rate will be \$30.00.
  - 1. If a promotional salesman is retained for a second consecutive 5 day period, the charge will be \$30.00 per day.
- c) Since the terms of employment by the dealer of its promotional salesmen does not permit warehouse work, arrangements must be made by the distributor to receive and unload any merchandise for sale on the route.
- d) The promotional salesmen are hired on a 5 day per week basis and if any distributor should require the services of such a person for Saturday, such work will be done on a voluntary basis only and a charge of \$35.00 for that day will be made.

The charges for the services rendered by the promotional salesman will be paid to the dealer through an invoice sent the distributor. The dealer in turn will pay the promotional salesman less the usual deductions, as required by law.

*Employer's Exhibit 12*

## 29. SALE OF ACCOUNTS

If and when such sale of chain or independent account is made, the formula for billing will be as follows:

Accounts served:

52 Weeks—at the ratio of .....	10 for 1
39 Weeks—at the ratio of .....	9 for 1
26 Weeks—at the ratio of .....	6 for 1
13 Weeks—at the ratio of .....	4 for 1
Less than 13 Weeks .....	3 for 1

29A. When a new chain store is assigned to a distributor, there are many calls to be made by the dealer prior to the actual opening—such [10] as: arranging for space; putting up shelf or gondola wire shelving; setting up displays on stands or gondolas—all of which take many hours and are time consuming. For the distributor to do this would disrupt his normal activities. A charge for this service is made; 40% of the initial order and then this amount is multiplied by a factor of 9. For example—suppose the opening order is \$100.00—40% equals \$40.00— $\$40.00 \times 9 = \$360.00$  which is the cost of the stop. This charge includes equipment.

Of course, should the distributor sell this stop subsequently, he would get 10 times the value in accordance with the sales ratio formula, if the account is served for 52 weeks. Therefore, if the volume is \$50.00—he would receive \$500.00.



**Employer's Exhibit 17****A G R E E M E N T**

Agreement made and entered into this 29 day of July 1967, by and between Lorenz Schneider Co., Inc., hereinafter called the Employer and the Bakery Drivers Union Local 802, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Union.

**ARTICLE 1—RECOGNITION**

(a) It is mutually agreed that this Agreement shall cover Route Salesmen, Trainees, Stock Clerks, Warehousemen, Part time Warehousemen and Warehouse Truck Drivers.

(b) It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement, shall remain members in good standing; and those who are not members on the effective date of this Agreement, shall on or after thirty-one (31) days following the effective date of this Agreement, become and remain members in good standing of the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date, shall on or after the thirty-first (31st) day following the beginning of such employment, become and remain members in good standing of the Union; at which time, the employees shall pay a part Initiation Fee of Ten (\$10.00) Dollars and the balance of the Initiation Fee, if any, upon the completion of their trial period.

*Employer's Exhibit 17*

(c) The Employer agrees to discharge, within seven (7) days after receipt of written notice from a properly authorized Official of the Union, any employee who has failed to tender the periodic dues and Initiation Fees uniformly required as a condition of acquiring and retaining membership, as and when such membership may be required as a condition of employment under the foregoing provision.

(d) The right to hire, promote, transfer by mutual agreement, discharge for cause, maintain discipline, and maintain efficiency of employees is the sole right and responsibility of the Employer, provided that Union members shall not be discriminated against as such, and that the Company shall not exercise these rights in violation of the provisions of this Agreement. In addition, the Employer has the exclusive duty and right to manage the business, direct the working forces, determine the location of plants, determine when a route or routes are to be adjusted, the methods of merchandising and the schedule work of Warehouse employees.

**ARTICLE 2—REPLACEMENTS**

(a) With respect to replacements or new employees, the Employer shall notify the Union of its needs and applicants sent by the Union shall be afforded an equal opportunity with others to qualify for employment. Referral of applicants by the Union shall not in any way be based on or affected by Union membership, or any rule, policy, requirement or obligation related thereto, and the Employer shall on a non-discriminatory basis have the right to reject any such applicant. Copies of this provision shall be duly posted

*Employer's Exhibit 17*

at places customarily used for notices to employees and applicants for work.

(b) After a satisfactory interview, the Route Salesman applicant shall be given a Ninety (90) calendar day trial period. In the case of a Warehouseman or Warehouse Truck Driver applicant, or Part Time Warehouseman, they shall be given a Thirty (30) calendar day trial period. If within said trial periods the applicants prove unsatisfactory in the Employer's sole discretion, the Employer may make replacements.

(c) The Employer shall not utilize a Lie Detector, Polygraph or any other similar device as a test of the truthfulness of any employee, prospective employees, or applicants for employment. Should the Employer violate the foregoing provision, the Union shall be free to engage in a work stoppage and other forms of concerted activities, which shall not be deemed to be in violation of this Agreement.

Nothing herein contained shall be construed as indicating that the Employer has ever employed or attempted to employ any of the devices or methods above mentioned.

ARTICLE 3—WAGES—ROUTE SALESMEN  
INDEPENDENT & CHAIN STORE  
DIVISION

(a) Newly hired Route Salesmen shall receive a weekly wage of Eighty-five (\$85.00) Dollars for the first Four (4) weeks of employment. Thereafter, his weekly wage shall be Ninety (\$90.00) Dollars or applicable Route Salesmen's wages operating a Route, whichever is greater.

*Employer's Exhibit 17*

## INDEPENDENT DIVISION

(b) Effective with the week beginning November 4, 1966, Independent Division Route Salesmen shall receive weekly compensation based on a commission rate of Nine (9%) percent from the first dollar of their gross sales.

(c) In addition to the weekly compensation provided above, Independent Division Route Salesmen, shall be entitled to a monthly incentive sales-bonus based on weekly average sales during the month as follows:

<i>Weekly Average Sales</i>				<i>Monthly Bonus Based on</i>	
<i>During Month</i>				<i>4 week month</i>	<i>5 week month</i>
\$1750.01	Up	To	\$1800	\$ 20.00	\$ 25.00
1800.01	"	"	1850	25.00	31.25
1850.01	"	"	1900	30.00	37.50
1900.01	"	"	1950	35.00	43.75
1950.01	"	"	2000	40.00	50.00
2000.01	"	"	2050	45.00	56.25
2050.01	"	"	2100	50.00	62.50
2100.01	"	"	2150	55.00	65.75
2150.01	"	"	2200	60.00	75.00
2200.01	"	"	2250	65.00	81.25
2250.01	"	"	2300	70.00	87.50
2300.01	"	"	2350	75.00	93.75
2350.01	"	"	2400	80.00	100.00
2400.01	"	"	2450	85.00	106.25
2450.01	"	"	2500	90.00	112.50
2500.01	"	"	2550	95.00	115.75
2550.01	"	"	2600	100.00	125.00
2600.01	"	"	2650	105.00	131.25



*Employer's Exhibit 17*

<i>Weekly Average Sales During Month</i>	<i>Monthly Bonus Based on</i>	
	<i>4 week month</i>	<i>5 week month</i>
\$2650.01 Up To \$2700	\$110.00	\$137.50
2700.01 " " 2750	115.00	143.75
2750.01 " " 2800	120.00	150.00
2800.01 " " 2850	125.00	156.25
2850.01 " " 2900	130.00	162.50
2900.01 " " 2950	135.00	166.75
3000.01 " " 3050	140.00	175.00
2950.01 " " 3000	145.00	181.25
3050.01 " " 3100	150.00	187.50
3100.01 " " 3150	155.00	193.75
Over 3150.01	160.00	200.00

## CHAIN STORE DIVISION

(d) Effective with the week beginning November 4, 1966, Chain Store Division Route Salesmen, shall receive a weekly base wage of Thirty-nine (\$39.00) Dollars, Seven (\$7.00) Dollars for each day worked, exclusive of holiday weeks, plus Six and One-half (6½%) percent commission from the first dollar of their gross weekly sales.

(e) In addition to the weekly compensation provided above, Chain Store Division Route Salesmen shall be entitled to a monthly incentive sales bonus based on the weekly average sales during the month as follows:

<i>Weekly Average Sales During Month</i>	<i>Monthly Bonus Based on</i>	
	<i>4 week month</i>	<i>5 week month</i>
\$2100.01 Up To \$2150	\$ 20.00	\$ 25.00
2150.01 " " 2200	25.00	31.25
2200.01 " " 2250	30.00	37.50

*Employer's Exhibit 17*

<i>Weekly Average Sales</i>				<i>Monthly Bonus Based on</i>	
<i>During Month</i>				<i>4 week month</i>	<i>5 week month</i>
\$2250.01	Up	To	\$2300	\$ 35.00	\$ 43.75
2300.01	"	"	2350	40.00	50.00
2350.01	"	"	2400	45.00	56.25
2400.01	"	"	2450	50.00	62.50
2450.01	"	"	2500	55.00	68.75
2500.01	"	"	2550	60.00	75.00
2550.01	"	"	2600	65.00	81.25
2600.01	"	"	2650	70.00	87.50
2650.01	"	"	2700	75.00	93.75
2700.01	"	"	2750	80.00	100.00
2750.01	"	"	2800	85.00	106.25
2800.01	"	"	2850	90.00	112.50
2850.01	"	"	2900	95.00	118.75
2900.01	"	"	2950	100.00	125.00
2950.01	"	"	3000	105.00	131.25
3000.01	"	"	3050	110.00	137.50
3050.01	"	"	3100	115.00	143.75
3100.01	"	"	3150	120.00	150.00
3150.01	"	"	3200	125.00	156.25
3200.01	"	"	3250	130.00	162.50
3250.01	"	"	3300	135.00	168.75
3300.01	"	"	3350	140.00	175.00
3350.01	"	"	3400	145.00	181.25
3400.01	"	"	3450	150.00	187.50
3450.01	"	"	3500	155.00	193.75
Over	\$3500.01			160.00	200.00

(f) It is agreed, that Independent and Chain Store Route Salesmen shall receive a minimum of Two Hundred and

*Employer's Exhibit 17*

Sixty (\$260.00) Dollars per year in monthly incentive sales bonus money. Route Salesmen who fail to earn Two Hundred and Sixty (\$260.00) Dollars per year in actual bonus money, shall receive the difference at the close of the year, between their bonus earnings, if any, and the Two Hundred and Sixty (\$260.00) Dollars, only for the year ending November 4, 1967. Thereafter the provision of this paragraph shall be null and void.

Route Salesmen may elect to be paid their bonus earnings on a monthly, quarterly or annual basis.

(g) Gross sales as used in this Article, shall mean the market price of the merchandise before discounts or any other allowances are given.

(h) In the event the Employer loses a chain or group of chains as customers, he shall have the right to either re-adjust the remaining routes comprising the Chain Store Division, or merge the remaining routes of the Chain Store Division with the routes comprising the Independent Division.

The rate of commission to be paid the Route Salesman for a newly combined route, shall be determined by negotiation to be held no later than Thirty (30) days from the effective date of such merger and the adjusted rate to take effect from the actual date of merger. In the event of failure to reach agreement, the parties agree to submit this issue to mediation, before a mediator designated by the New York State Board of Mediation.

The Union and the Employer recognize the changes that have occurred in retail food stores, i.e., the rapid disappearance of small individual stores and their replacement

*Employer's Exhibit 17*

at an accelerated rate by the large corporate and cooperative food chains, and accordingly recognize the appropriateness of considering changes in delivery, merchandising and compensation methods.

In view of this, the Employer covered by this Agreement may at any time request a meeting with the Union representing his employees, for the purpose of negotiating and attempting to agree on different commission payments or other methods of compensation or delivery methods which may be desirable under such changed situation for the Union, Employer and employees involved.

In the event of such request, the parties will meet promptly for the purpose outlined above.

This section (h), shall not be subject to the Arbitration Procedure of this Agreement.

ARTICLE 4—WAGES—STOCK CLERKS, WARE-  
HOUSEMEN AND WAREHOUSE TRUCK  
DRIVERS

(a) Newly hired Stock Clerks and Warehousemen, shall receive a weekly wage (exclusive of overtime) of Eighty-Five (\$85.00) Dollars the first Six (6) months of employment, Ninety (\$90.00) Dollars per week for the following Six (6) months of employment and Ninety-Five (\$95.00) Dollars per week for the following Six (6) months of employment. Thereafter, they shall receive wages as provided in sections (b), (c), & (d).

(b) Effective with the week beginning November 7, 1966, all Warehousemen and Stock Clerks shall receive a maxi-



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imum weekly wage (exclusive of overtime) of One Hundred Four (\$104.00) Dollars.

(c) Effective with the week beginning November 6, 1967, all Warehousemen and Stock Clerks shall receive a maximum weekly wage (exclusive of overtime) of One Hundred Eight (\$108.00) Dollars.

(d) Effective with the week beginning November 4, 1968, all Warehousemen and Stock Clerks shall receive a maximum weekly wage (exclusive of overtime) of One Hundred Twelve (\$112.00) Dollars.

(e) Part time Warehousemen: Beginning November 7, 1966 part timers shall receive One Dollar and Fifty Cents (\$1.50) per hour for first six (6) months; One Dollar and Seventy-Five Cents (\$1.75) per hour next six (6) months; Two (\$2.00) Dollars thereafter.

(f) Leader spotter shall be paid Two Dollars and Twenty Cents (\$2.20) per hour.

(g) It is further agreed that if the Employer requires a full time Warehouse Truck Driver or Tow Motor Operator, then the wages for such classification shall be Ten (\$10.00) Dollars a week more than those provided in sections (a), (b), (c) & (d) above.

(h) The work week for all full time Stock Clerks, Warehousemen and Warehouse Truck Drivers shall consist of Five (5) days; Forty (40) hours; and overtime at the rate of time and One-Half ( $1\frac{1}{2}$ ) shall be paid after Eight (8) hours daily.

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## ARTICLE 5—SICK LEAVE

(a) After One (1) year's service, a full time employee shall become eligible to collect a maximum of Five (5) days' sick pay at the rate of Twelve (\$12.00) Dollars per day, operated on a fiscal year basis (October 1st to September 30th). Unused funds shall be paid Salesmen on the third pay day of each new fiscal year. Bonus for non-absence of Twenty-Five (\$25.00) Dollars or Fifteen (\$15.00) Dollars for One (1) day's absence, Ten (\$10.00) Dollars for Two (2) days' absence shall be paid simultaneously.

(b) After one year, Sick Leave Pay shall be increased to Fifteen (\$15.00) Dollars per day. Bonus for non-absence shall be increased to Forty (\$40.00) Dollars or Twenty (\$20.00) Dollars for One (1) day's absence, Fifteen (\$15.00) Dollars for Two (2) days' absence.

(c) An employee who is injured during his work day and is unable to continue working, shall be paid the full day's pay. No deduction or charge shall be made against the Sick Leave provided in sections (a) and (b).

## ARTICLE 6—WELFARE PLAN

(a) The Employer's contribution to the Trustees of the Bakery Drivers Local 802 Welfare Fund shall be Twenty-Four (\$24.00) Dollars per month for each full time member or part timers who work in excess of twenty-five (25) hours per week, in any month.

*Employer's Exhibit 17*

(b) The Employer and the Union shall execute such Trust Agreement and other documents as may be necessary to carry out the foregoing.

(c) It is further agreed that in the event of absence due to sickness or accident of any permanent employee, the Employer shall continue to make Welfare contributions for such employee for a period of six (6) months.

(d) Temporary employees shall be covered only for the minimum requirement of the State Disability Law by Bakery Drivers Local 802 Welfare Fund.

## ARTICLE 7—PROFIT SHARING PLAN

The Lorenz Schneider Profit Sharing Retirement Plan in effect on November 7, 1966 shall remain unchanged and continue in effect during the entire term of this contract.

## ARTICLE 8—VACATIONS

(a) Full Time Employees who complete twelve (12) months of continuous service shall be entitled to one (1) week paid vacation.

(b) Full Time Employees who complete two (2) or more years of continuous service, shall be entitled to two (2) weeks paid vacation.

(c) Full Time Employees who complete eight (8) or more years of continuous service shall be entitled to three (3) weeks paid vacation.

*Employer's Exhibit 17*

(d) Full Time Employees who complete fifteen (15) or more years of continuous service, shall be entitled to four (4) weeks paid vacation.

(e) Part timers: Pro rata vacation based upon average hours per week on yearly basis divided into forty (40) hours, after one (1) year of service.

(f) Vacation pay for Route Salesmen shall be computed on the average weekly salary and/or commission of the preceding calendar year.

(g) Vacations shall be scheduled to run between January and November inclusive and employees shall be permitted to choose their vacations according to seniority.

(h) Route Salesmen entitled to three (3) or four (4) weeks vacation shall be required to split such vacation.

(i) No employee may work during his vacation and receive extra pay for working during that period without the consent of the Union.

(j) Upon the termination of employment for any reason, an employee who shall have been continuously employed by the Employer for twelve (12) months or more, shall receive pay for pro-rata vacation benefits accrued under the sections above, not previously taken, and provided he has given two (2) weeks' notice, if severance is voluntary. No benefit for discontinued employee.

(k) In both Sales Divisions, vacations shall be pro-rated in those cases where Salesmen were absent ten (10) weeks or more during the year. Basis of pro-ration shall be on two (2), three (3) or four (4) days, depending upon the



*Employer's Exhibit 17*

length of service of Salesmen, for each ten (10) weeks of absence.

## ARTICLE 9—HOLIDAYS

(a) The Employer agrees that the Stock Clerks, Warehousemen and Warehouse Truck Driver employees shall receive the following holidays with pay:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas Day
Independence Day	

(b) During a week in which any of the designated holidays occur, the work week shall consist of four (4) days; except for the week in which Christmas falls on a day other than a Saturday or Sunday, in which case the Salesmen, Warehousemen, Clerks, etc., shall work on the Saturday. In that event the Warehousemen, Clerks, etc., shall be entitled to receive time and one-half ( $1\frac{1}{2}$ ) of their Daily Wage added to their regular salary.

(c) If any of the designated holidays occurs during the vacation of any employee, he shall receive an additional day's pay.

(d) Should holiday fall on a Saturday, Warehousemen shall be given an extra day's pay; salesmen shall be given an extra Fifteen (\$15.00) Dollars.

(e) Holidays shall be paid provided that employees work the day before and the day after the above designated holidays, except provided, that the day before or after is not

*Employer's Exhibit 17*

a Saturday or Sunday; or if an employee's absence is authorized, or when an employee is confined in a hospital due to illness.

## ARTICLE 10—DISCHARGE

(a) There shall be no summary discharge by the Employer of an employee except for intoxication while on duty, or in the event that an employee is involved in an act of dishonesty, or handling unauthorized items on his truck or in the event an employee suffers re-vocation of his driver's license in a court of recognized jurisdiction.

In such case, the Employer shall immediately give to the employee and to the Union, written notice specifying the cause for discharge. In the event of a dispute, the matter shall be subject to arbitration as provided below.

(b) If the Employer finds it necessary to discharge an employee for any other just cause he shall first notify the employee and the Union in writing of his intentions. Such notice shall be given at least one (1) week in advance. The Union shall then investigate the charges preferred or the reasons given, and make known its decision to the Employer within one (1) week. Should there be any dispute as to the discharge of any such employee, said dispute shall be arbitrated pursuant to Article 11, and pending such arbitration, there shall be no discharge of the employee.

(c) Just cause shall include but not be limited to the following: Any salesman, whose route, chain or independent, which does not average a quarterly increase of three (3%) percent to five (5%) percent in weekly sales volume for a period of one (1) year shall be subject to discharge. Ex-

*Employer's Exhibit 17*

tenuating circumstances preventing such increase shall not be charged against the salesman and therefore no discharge.

(d) No cause for discharge other than that specified in the aforesaid written notice, may be considered by the Arbitrator.

**ARTICLE 11—ARBITRATION**

(a) In the event of any grievance or dispute between the parties, the parties shall attempt to settle such controversy amicably.

(b) In the event such controversy cannot be settled amicably, then the matter in dispute shall be submitted by either party to an arbitrator designated by the American Arbitration Association subject to its rules. The decision of such arbitrator shall be final and binding upon the parties hereto.

(c) In the event the Employer refuses to arbitrate or fails to comply with an Arbitrator's Award, the Union may after Twenty-Four (24) hours' notice, declare a strike and such action will not be a breach of this Contract; whether or not any legal proceedings are pending to compel arbitration or to vacate or confirm an Arbitrator's Award.

**ARTICLE 12—UNIFORMS**

Uniforms shall be furnished by the Employer which shall bear a Union label. It is understood and agreed that the employees will care for the cleaning and maintenance during the period of three (3) years; subject to the existing rules for replacements at any time earlier than Three (3) years.

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## ARTICLE 13—SHOP STEWARD

There shall be a steward at each distributing plant, whose duties it shall be to see that the members of the Union comply with this agreement and the rules of the Employer and the Union consistent with this Agreement. Such Steward shall be an employee in the shop in which he shall be a Steward, and be elected by the men in the shop and approved by the Union.

The Employer agrees that there shall be no discrimination against any Steward or any member for Union activities, provided that such activities are not carried on, in or on the premises of the Employer, except for handling of grievances.

No Steward or any other employee shall have the right to cause a strike or stoppage without authorization from the Union. It is distinctly understood that such employee's duties as Steward shall in no way interfere with his usual duties as an employee.

## ARTICLE 14—SENIORITY

(a) When a route is open, promotions shall be made according to seniority, competence and fitness. The second vacancy created by such promotion shall also be filled according to seniority, competence and fitness. The third vacancy thus created shall be filled by Company assignment.

(b) All open routes shall be posted immediately after they become vacated and remain posted for a period of four (4) days. The route shall be fully described as to the num-



*Employer's Exhibit 17*

ber of stops, amount of business, area in which the routes operate and other pertinent information.

(c) After the bids are closed the successful bidder must be assigned to his chosen route within two (2) weeks. If the assignment is not made within two (2) weeks, the employee affected shall be paid wages based on his chosen route.

(d) In the event of any dispute concerning fitness and ability, the same shall be considered by the Employer and a Union Shop Committee only, who shall endeavor to determine the matter by mutual agreement.

(e) Employees who obtain promotion as a result of a bid shall not be permitted to exercise seniority for purposes of bidding for a period of two (2) years.

(f) In the event of merger or re-adjustment of routes as contemplated in Article 3 (h), which may result in a reduction of the number of Route Salesmen required, then the lay-offs that may result shall be determined on the basis of seniority.

#### ARTICLE 15—ADJUSTMENT OF ROUTES

In the event of a permanent route adjustment, the following method of computing the guarantee shall be used.

Applicable commissions shall be payable on the net business taken away, which means the business taken away less any business added to the route, based on a fifty-two (52) week average immediately preceding the adjustment, multiplied by thirteen (13). This compensation shall be paid to the Salesman in equal weekly installments over a period of

*Employer's Exhibit 17*

thirteen (13) weeks added to his regular weekly pay, regardless of absence by sickness or vacation. It is understood that no routes shall be adjusted during the period beginning May 15th and ending September 15th.

In the case of Riverhead, the period during which no routes may be adjusted shall be between June 15th to September 15th. The guarantee shall be based on a four (4) week period prior to the adjustment.

Stops or accounts which may be added to the route after the adjustment shall not be used to reduce the amount of the guarantee.

No open route shall be adjusted before being posted for bid.

**ARTICLE 16—DUES CHECK-OFF**

The Employer agrees to deduct all of the Union Dues due to the Union from the wages of the employees covered by this agreement on the second pay period of each month in accordance with the statement supplied by the Union. The Union agrees to furnish the Company with proper dues check-off authorization forms signed by each employee.

**ARTICLE 17—JURY DUTY**

(a) Effective pursuant after one (1) year of service, employees who are subpoenaed and serve on Jury Duty shall be paid the difference between Jury Duty pay, excluding the Jury Duty pay earned on the employee's regular day off, and their regular earnings for such time as they serve as jurors. An employee dismissed from Jury Duty must re-

*Employer's Exhibit 17*

turn to work the following day if it is one of his scheduled working days.

(b) To be entitled to the benefit of section (a), an employee must immediately notify management when he receives notice to serve on Jury Duty.

## ARTICLE 18—MISCELLANEOUS

(a) It is further agreed by the Employer that he will not enter into any agreement with any employee, verbal or in writing, which may be inconsistent or in conflict with this agreement, except that the Employer may add to benefits or earnings as circumstances warrant. Further, except that after February 1, 1967, and because of Management's proposed change in its method of distribution by the sale of routes to its route salesmen, the following procedures are to be followed:

- 1) Beginning the first week of January, 1967, management and union are to confer regarding the terms of individual distributor agreement; time for such discussion and agreement may not extend beyond March 31, 1967.
- 2) Should there not be complete concurrence at this date, management may proceed to negotiate the sales contract directly with interested salesmen and their respective attorneys.
- 3) Route salesmen may purchase routes on and after February 1, 1967.
- 4) Value of route shall be determined by weekly sales average for 52 weeks immediately prior to August 1,

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1966, an offer to purchase route shall remain in effect for the duration of this Labor Contract, including the Bonus Arrangement.

- 5) Beginning in the first week of May, 1969, management and union shall conduct discussions relative to those route salesmen who have not purchased their routes and who remain in the bargaining unit.

(b) The Employer agrees and the Union shall have the right to ask for and check payroll and sales records of any employee working under the terms and conditions of this agreement, who is involved in a dispute with the Employer with respect to his earnings.

(c) The work week shall consist of five (5) days, one of which may be a Saturday in storm situations or during Christmas-New Year week.

(d) Employees must notify their Superintendent or Manager and the Union immediately of any change in residence address.

(e) It is mutually agreed and understood that this agreement shall apply only to employees working under the classifications mentioned herein.

(f) It is mutually agreed and understood that only those items selected and designated by the Employer may be sold from the route truck.

(g) It is further agreed that all Salesmen, as soon as their calls are properly serviced to the satisfaction of the Employer, shall be allowed to drive in and settle their accounts in full daily.



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(h) It is agreed that the men shall receive their wages and commissions, not later than Friday, for the week ending the previous Friday.

(i) Whenever the Employer authorizes Route Salesmen to take on a charge account, the employees shall not suffer any loss in case of non-payment.

(j) There shall be no lockouts, strikes, slow down or work stoppages during the life of this Agreement.

(k) Salesmen who sever relations or who are dismissed, will respect the contract with the Employer, regarding agreement not to enter into similar or competitive business on the same territory for one (1) year after severance or dismissal.

(l) No employee covered by this Agreement shall be required to cross any picket line established at any place, and refusal to cross such picket line shall not constitute a violation of this Agreement or cause for discharge or discipline.

(m) Rules and Regulations of Management are acknowledged.

ARTICLE 19—ROUTE ELIMINATION

(a) The Employer may eliminate a route and re-distribute its customers among other routes covered by this Contract; if such route's volume of sales becomes uneconomic over a period of three (3) months. The employee affected by such route elimination shall continue to be employed by replacing a junior employee, except if it is determined that the loss of sales is the fault of the Route Salesman in which case he shall be dismissed.

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ARTICLE 20—TERM OF AGREEMENT

This Agreement shall go into effect as of November 4, 1966 and shall continue in full force for three (3) years ending the first Friday in November, 1969.

LORENZ SCHNEIDER CO., INC.

By /s/ MILTON V. BLOWN, Pres.

By /s/ ALLEN H. MILLER, V. P.

BAKERY DRIVERS LOCAL 802

By /s/ JOHN STRAUSS  
John Strauss, Pres.

By .....  
Sec.-Treas.

**Employer's Exhibit 18**

WISE FOODS

(Logo BORDEN)

DIVISION OF BORDEN FOODS, BORDEN INC.

**AUTHORIZED SIZE SHEET**

FOR: Daitech Shopwell  
400 Walnut Avenue  
New York 54, New York

Effective immediately  
Page 1 of 2

<i>Weight</i>	<i>Store Cost</i>	<i>Suggested Retail Price</i>
1 OZ. PKG. Chips	\$ .90 doz.	\$ .10 ea.
3½ oz. pkg. Chips	2.61 doz.	.29 ea.
4 oz. Snack Pack Chips	3.87 doz.	.43 ea.
6 oz. pkg. Chips	3.87 doz.	.43 ea.
9 oz. Two-Sum Chips	5.85 doz.	.65 ea.
6 oz. box Chips	3.91 doz.	.43 ea.
11 oz. box Chips	6.65 doz.	.69 ea.
12 oz. pkg. Chips	5.85 doz.	.65 ea.
*4 lb box Chips	2.20 each	none
16 oz. pkg. Chips	8.01 doz.	.89 ea.
3¼ oz. pkg. Juliennes	2.25 doz.	.25 ea.
3½ oz. pkg. Ridgies	2.61 doz.	.29 ea.
6 oz. pkg. Ridgies	3.87 doz.	.43 ea.
6 oz. box Ridgies	3.91 doz.	.43 ea.
9 oz. Twin Ridgies	5.85 doz.	.65 ea.
***6 oz. Eight Pack Corn Chips	3.87 doz.	.43 ea.
3½ oz. pkg. Onion & Garlic	2.61 doz.	.29 ea.
6 oz. pkg. Onion & Garlic	3.87 doz.	.43 ea.
3½ oz. pkg. Barbecues	2.61 doz.	.29 ea.
6 oz. pkg. Barbecues	3.87 doz.	.43 ea.
3½ oz. pkg. Onion Rings	3.51 doz.	.39 ea.

Your old authorized size sheet should be destroyed. Please do not stock any sizes that are not authorized. If you do, they will be charged back to you.

Issued by: Marketing Administration Department

May 13, 1971—fkm

369a

*Employer's Exhibit 18*

WISE FOODS

(Logo BORDEN)

DIVISION OF BORDEN FOODS, BORDEN INC.

AUTHORIZED SIZE SHEET

FOR: Daitch Shopwell  
400 Walnut Avenue  
New York 54, New York

Effective immediately  
Page 2 of 2

<i>Weight</i>	<i>Store Cost</i>	<i>Suggested Retail Price</i>
5 oz. pkg. Pizza Wheels	\$ 3.51 doz.	\$ .39 ea.
ADD: x 3½ oz. pkg. Star Lites	3.51 doz.	.39 ea.

\* Suburban Stores *ONLY*.

\*\*\* Authorized for all stores serviced by dealers that carry this item.

x Authorization effective when item becomes available to dealer.

Your old authorized size sheet should be destroyed. Please do not stock any sizes that are not authorized. If you do, they will be charged back to you.

Issued by: Marketing Administration Department

May 13 1971—fkm



**Decision and Direction of Election**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR  
RELATIONS BOARD

REGION 29

Case No. 29-RC-1980

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[Caption Omitted]

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[1]

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Gary T. Kendellen, a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Employer contests the labor organization status of the Petitioner, claiming that none of Petitioner's members are employees within the meaning of the Act but are in fact independent contractors. The Employer further con-

*Decision and Direction of Election*

tends that the Petitioner is a trade association rather than a labor organization.

The Petitioner seeks to represent a unit composed of all driver-salesmen working out of the Employer's premises at New Hyde Park and Riverhead, New York. The Employer asserts that all these individuals are independent contractors rather than employees within the meaning of Section 2(3) of the Act.

## [2]

The Employer is a key distributor of snack foods for the 5 counties of New York City and Nassau and Suffolk Counties. The primary facilities in question are located in New Hyde Park, New York and Riverhead, New York with several of the individuals in question operating from another privately owned warehouse. Prior to 1967, the individuals in question were called route salesmen and were concededly employees of the Employer. At that time route salesmen and warehousemen were represented by Local 802, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called Local 802. In 1967, the route salesmen became distributors with the concurrent change in status set forth below, and Local 802 ceased representation of them, although it did continue to represent the Employer's warehousemen.

There are currently 52 distributors in the proposed unit. Some of these men were employed as route salesmen for the Employer prior to 1967. In 1967, they purchased their routes from the Employer making large initial down payments. The total purchase price was based upon the average week's sales of the route multiplied by a given factor. Other distributors who joined the Employer later similarly

*Decision and Direction of Election*

purchased their routes, either from the Employer or from other distributors who wanted to sell.

The distributors themselves may sell their routes at any time, either to the Employer or to a third party, provided only that a third party purchaser must be approved by the Employer. The agreement between the Employer and the distributor sets forth the formula by which the price for any such re-sale must be computed. The record indicates, however, that this provision has not been enforced in regard to sales to third persons and that in practice distributors have been allowed to sell for whatever price they can get. Persons seeking to buy available distributorships directly from the Employer are interviewed by the General Manager after filling out several forms, including a standard form application for employment. They sign an interim agreement providing for a 60 day probationary period during which either party may change its mind with no forfeiture save that, if the individual has already been trained by the Employer and he changed his mind, he must pay a sum of money for said training. During [3] this probationary period, the individual is taken on the route he will ultimately buy, by a Distributor Representative whose function is to oversee a given number of assigned routes. The trainee is shown where the stores on the route are located and how to service them properly.

At the end of 60 days the Employer and the individual enter into a formal agreement by which the individual purchases the route from the Employer. He signs a promissory note and the Employer retains a chattel mortgage for the unpaid balance of the purchase price. By the terms of this Agreement, the distributor agrees *inter alia* to

*Decision and Direction of Election*

maintain accurate route books and customer books, follow the book of company procedures, and use his best efforts to procure sales and new accounts for the franchised products of the Company without regard to fixed or bounded territory. The Agreement may be terminated by the Employer for failure to make payments under the promissory note, for handling competitors' products, for wilful neglect of customers, for dishonesty, or for several other technical infractions enumerated therein. The current Agreements are not terminable at will by either party, although the first agreements entered into by six of the distributors in 1967 did bind the Employer to repurchase the routes upon 30 days' notice from the distributors. The Agreements also specifically state that it is the intent of the parties that the distributors are independent contractors and not employees.

By the terms of the Agreement, the profit of the distributors is to be approximately 20 percent, less rebates for those distributors who service chain-store routes. The distributors are free to establish their gross profits, however, in that they may increase the number of customers, either by soliciting new, open accounts or buying individual stops from other distributors. Both chain store and independent store distributors are free to solicit any open accounts except for new chain stores which are opened by the Employer and either sold to the distributors or given as a replacement to one who had serviced a store in the chain which had closed. The only restrictions on soliciting new accounts are that the distributors may not solicit outside the 7-County area serviced by the Employer nor solicit accounts serviced by other distributors for the Employer or by Yorkshire Foods, a related company.



*Decision and Direction of Election*

## [4]

It is clear from the record that there is no day-to-day supervision of the distributors by the Employer. The distributors can arrange the order and frequency with which they service stops as long as they service them at least once a week. They have no set hours of work and can take days off without permission. They can take vacations at their own convenience. The distributors can hire their own vacation replacements or the Employer will provide substitutes to service routes upon request, for a set fee. Distributors are not required to wear any uniform or to report to the warehouses by any given time save only that the warehouse has certain hours of operation within which the distributors must pick up any goods they want, whether for immediate use or to store in their own warehouse facilities.

The Employer does not withhold tax, nor does it provide unemployment or other benefits for distributors. All the distributors drive trucks painted with the name of Wise Potato Chips, the primary manufacturer of goods sold by the Employer. Fourteen of the trucks are distributor-owned, having been bought either from outside truck dealers or from Schneider Trucks, Inc., herein called Schneider, a subsidiary of the Employer. The rest of the trucks are leased either from Schneider or from outside firms. There is no requirement that the distributors use one type of arrangement in preference to another, except that Schneider has stopped renting to Riverhead-based distributors and has given these men the option of purchasing their trucks or renting elsewhere when their current leases run out. Most of the distributors garage their trucks at the Company premises for a monthly fee, although they are not required to do so (except that the leasing arrangement with Schneider provides for the trucks to be kept overnight at

*Decision and Direction of Election*

a garage consented to by Schneider). The Schneider lease also calls for the trucks to be used only on weekdays and on the snack food route of the lessee.

Except for the two individuals who store goods in their own warehouse facilities, the distributors put in order slips daily for the items they need the following day. The Employer sets the price it will charge the distributors. The price the distributors get from a chain store [5] also has been set, by agreement between the manufacturer, i.e. Wise, and the buyer for the chain. The Employer asserts that prices for the independent customers are a matter for the individual distributor to determine, although it admittedly has suggested prices. The witnesses for the Petitioner state that they are told what prices to charge. Additionally, some packages carry a retail price on them and advertisements placed by the manufacturers in trade publications offer a reduction in the normal price for certain promotional purposes. Finally, memoranda have been sent out by the Employer to the distributors telling them all to charge the same price lest the Employer and/or the distributors be charged with violation of uniform pricing regulations. Thus, it is clear that a very limited amount of leeway is available to the distributors in setting prices.

The distributors who service chain stores do not collect any money. The chain stores pay the manufacturer directly, the latter forwards the money to the Employer, and the Employer pays these distributors their profits. The distributors who service independent stores generally are paid cash by their customers. They then pay the Employer for the goods they order according to the terms set in their individual Agreements with the Employer. Any loss due to bad checks or due to any credit given by the distributor

*Decision and Direction of Election*

without specific authorization from the Employer falls upon the distributor.

As mentioned above, the Employer employs individuals known as Distributor Representatives who oversee a certain number of distributor routes. Most of these individuals were admittedly supervisors before the routes were sold in 1967. As such, they occasionally rode with the people under their supervision to check their work. Since the change-over they no longer regularly ride with the distributor. However, the record indicates that they do go to the various customers' stores to check up on the display of merchandise, to see if sufficient merchandise is on the shelves and to ascertain generally what sort of job the distributor is doing. On at least one occasion, a distributor has seen the Distributor Representative following him on his route in a car and going into each stop [6] after he left it. The Distributor Representatives have called distributors into their office to tell them that a store was not being properly handled and to tell them how to more properly service an account. If no improvement is shown, the Distributor Representatives report the situation to the General Sales Manager for further action. Distributors have received letters from the General Sales Manager, notifying them that complaints have been received about their service and warning that, if the store refuses to deal with that distributor, the account will be lost to the distributor with no remuneration.

The record reveals that only one distributor has ever had his route taken away from him. This individual lost his route as a result of dishonesty. Insofar as loss of individual stops is concerned, the record shows that the Employer does not take them away from an individual but that, in cases where a store refuses to deal with a distributor, the Em-

*Decision and Direction of Election*

ployer will look to see who is at fault. If they determine that it was the customer's fault, they will "protect" the account for their distributor, i.e., no one else can solicit that account. If, however, the Employer determines that the loss was the fault of the distributor, the account may be declared "open" and can be solicited by any one else, with no compensation to the distributor who had the account.

The Board has frequently held that, in determining the status of persons alleged to be independent contractors, the Act requires application of the "right of control" test, stating that, where the person for whom the services are performed retains the right to control the manner and means by which the result is to be accomplished, the relationship is one of employment, rather than that of independent contractor. The resolution of this question depends upon the facts in each case, and no one factor is determinative.<sup>1</sup>

On the basis of the foregoing and the entire record, I am satisfied that the distributors are not independent contractors, although I am aware that the evidence discloses certain factors which are usually associated with independent contractor status. Thus, the distributors purchase [7] their trucks, set their own hours of work, and the Employer does not make any payroll deductions from them. On the other hand, the Employer leases the majority of trucks, and restricts the use of these trucks to company business, requires the distributors to carry only its products, unilaterally establishes the price it charges the distributors, assists them in the solicitation of accounts, decides when customers shall

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<sup>1</sup> *Borden, Inc.*, 192 NLRB No. 7, 181 NLRB 109; *El Mundo, Inc.*, 167 NLRB 760.



*Decision and Direction of Election*

be "lost" by distributors, instructs distributors on how to service accounts, and retains the right to terminate the agreement under certain circumstances of which it is the sole judge. Although there is evidence that the distributors do sell or trade their routes, the Employer still effectively controls such sale by reserving the right to reject any applicant, and by setting down the monetary formula by which said sale shall be transacted. In addition, while the distributors may set their own prices to independent customers, it is clear that the prices can vary only by a few cents and that the Employer is concerned with any variance.

In sum, then, all of the record evidence indicates that the distributor's compensation is not controlled only by his own efficiency and efforts, but is effected substantially by the decisions and actions of the Employer, whether they be in the form of suggestions and requests or by direct orders. Accordingly, I find the distributors to be employees of the Employer.<sup>2</sup>

## [8]

The record reveals that all but two members of Petitioner are the distributors involved here. Inasmuch as I have found these distributors to be employees, it follows that the Petitioner is an organization composed of employees. The Constitution and By-Laws of the Petitioner reveals that Petitioner was formed for the object of "... negotiation with any manufacturer, prime distributor or dealer ... in regard to wages, hours, territories, working conditions, commissions, fringe benefits and all matters pertaining to the earnings, welfare, tenure and retirement, sickness and other rights of employment ..."

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<sup>2</sup> *Frito-Lay, Inc.*, 167 NLRB 73.

*Decision and Direction of Election*

The record reveals that steps have been initiated by Petitioner to further the objects set forth above and that the Petitioner has held regular meetings at which employees have participated. Based upon all of the above, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

3. The Employer also asserts that a question concerning representation does not exist even if the distributors herein are deemed to be employees, inasmuch as they were included in a unit within which an election was conducted on January 20, 1972, in which they could or should have voted. It contends that under Section 9(c)(3) of the Act, which prohibits the holding of an election in a unit or subdivision thereof in which valid election was held during that preceding 12-month period, no election may be directed herein. On December 30, 1971, the Employer entered into an Agreement for Consent Election with Local 802, in Case No. 29-RC-1981, providing for an election to be conducted on January 20, 1972, in a unit composed of

“all sales promotional employees, helpers and assistant distributor representatives, excluding all other employees, guards and supervisors as defined in the Act.”

In that case, the Employer submitted an eligibility list with 15 names on it including 8 sales-promotional men. Only one name on that list coincides with the list of distributors herein and the record indicates that the said individual purchased his route on April 14, 1972, after the earlier election. It is clear that both parties in the earlier proceeding intended to and did, exclude distributors now

*Decision and Direction of Election*

under consideration from that unit. Accordingly, I reject this contention of the Employer.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All distributors employed by the Employer at 2000 Plaza Avenue, New Hyde Park, New York and at Riverhead, New York, excluding all office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in the Act.

[9]

**DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person

*Decision and Direction of Election*

at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who [10] have been permanently replaced.<sup>3</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Independent Routeman's Association.

Dated: October 3, 1972  
at Brooklyn, New York

SAMUEL M. KAYNARD

Samuel M. Kaynard  
Regional Director  
16 Court Street  
Brooklyn, New York 11241

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<sup>3</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1256; *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such a list must be received in the Regional Office, 16 Court Street, Brooklyn, New York, on or before October 10, 1972. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.



**Schneider's Request for Review**

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

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[Caption Omitted]

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REQUEST FOR REVIEW

The Company, Lorenz Schneider Co., Inc., hereby requests review of the Regional Director's decision on the following grounds:

1. A substantial question of law and policy is raised because of the absence of official Board precedent concerning the issues in this case;
2. The Regional Director's erroneous factual findings prejudicially affect the rights of the Company.

I

STATEMENT OF BACKGROUND

Lorenz Schneider Co., Inc. (the "Company") is a New York corporation with its principal headquarters in New Hyde Park, New York. It is primarily engaged in the distribution of snack foods throughout the New York metropolitan area.

This proceeding arose with the filing of a petition by the Independent Routemen's Association (the "Petitioner") seeking certification as the exclusive bargaining representative for "all driver-salesmen working out of 2000 Plaza

*Schneider's Request for Review*

Avenue, New Hyde Park, New York and at Riverhead" of Lorenz Schneider. Hearings were held at the offices of Region 29 on nineteen hearing dates between May 12, 1972 and August 23, 1972.

On October 3, 1972, the Regional Director for Region 29 directed an election in the unit sought by the Petitioner.

It is submitted that the direction of election is inappropriate because (1) the individuals sought by the petition are independent contractors within the meaning of Section 2(3) of the Act; (2) the Petitioner is not a labor organization pursuant to Section 2(5) of the Act; and (3) if the individuals are employees and the Petitioner is a labor organization, any election is barred until January 20, 1973 by Section 9(c)(3) of the Act.

## II

### GROUND FOR REVIEW

The Company respectfully requests review of the Regional Director's decision on the following grounds:

1. The issues involved in this proceeding raise substantial questions of law and policy that should be decided by the Board. In fact, the Regional Director, in support of his decision that the individuals who are the subject of this petition are employees, cited only one case, *Frito-Lay, Inc.*, 167 NLRB 73 (1967). Under that decision, the individuals herein are independent businessmen. In any case, the Seventh Circuit, in circumstances almost identical to those in the Board's *Frito-Lay* case rejected the more stringent criteria relied on by the Board in the *Frito-Lay* case and established a standard under which these individuals clearly are independent contractors. *Frito-Lay, Inc. v. NLRB*,

*Schneider's Request for Review*

385 F.2d 180 (1967). Moreover, in concluding that the Petitioner is a labor organization, the Regional Director disregarded the Board's recently articulated standard for such determinations. See, *Douglas Oil Co.*, 197 NLRB No. 42 (1972). See also, *McDonald's of Canoga Park*, 162 NLRB 367 (1966). And finally, no election can be directed until January 20, 1973 because if these individuals are employees, they were eligible to vote in an election of the Company's driver-salesmen conducted on January 20, 1972.

2. The Regional Director's findings on substantial factual issues, which are the foundation of his decision, are clearly erroneous and such errors prejudicially affect the rights of the Company.

## III

SUMMARY OF EVIDENCE AND ARGUMENT IN SUPPORT OF  
GROUNDS FOR REVIEWA. IN ABSENCE OF BOARD PRECEDENT, THE BOARD SHOULD  
DECIDE THE ISSUES INVOLVED HEREIN.1. *The Affected Individuals Are Independent Contractors.*

The Regional Director, in concluding that the individuals who are the subject of this petition are employees, relied solely on the Board's decision in *Frito-Lay, Inc.*, 167 NLRB 73 (Aug. 16, 1967). It should be noted, however, that subsequent to that decision, on November 7, 1967, the Seventh Circuit denied enforcement of the Board's findings of a Section 8(a)(5) violation based on a prior Board determination that individuals performing the same functions for Frito-Lay, although located in New York instead of

*Schneider's Request for Review*

New Jersey, (the August, 1967 decision affected distributors in New Jersey) were employees rather than independent contractors. The court held that individuals who distribute snack goods similarly to the distributors herein, are independent businessmen. *Frito-Lay, Inc. v. NLRB*, 385 F.2d 180.

Clearly, under the Seventh Circuit's decision these individuals are not employees. And, even utilizing the criteria promulgated by the Board in the *Frito-Lay* case, these distributors are independent businessmen. The Board therein relied on seven factors, claiming no one to be determinative but its decision was based on their cumulative effect. These factors were:

"(1) The routes are controlled by the Employer in terms of location, size, and sales practice. (2) The distributors are in practice effectively limited to sales of the Employer's products. (3) The Employer establishes the price of its products. (4) The Employer assists distributors in the solicitation of new outlets. (5) The Employer assists in the billing and collection of accounts which comprise the major portion of the distributors' income. (6) The distributor retains no proprietary rights in the territory which he can sell to a third party, while the Employer reserves the right to terminate the relation upon written notice. (7) The Employer requires the filing of certain reports on forms provided by it." 167 NLRB at 74.

The Regional Director, however, in his findings, determined that several of these factors do not exist in the instant case and erred in his findings, based on the record evidence, as to others that he alleged existed (discussed *infra* at pp. 9-15).



*Schneider's Request for Review*

For example, the Regional Director found that the Company did not establish limitations on location, size of routes and sales practice since distributors "may increase the number of customers, either by soliciting new, open accounts or buying individual stops from other distributors. Both chain and independent store distributors are free to solicit any open accounts [those accounts not being serviced with the products distributed by the Company] except for chain stores which are opened by the [Company] and either sold to the distributors or given as a replacement to one who had serviced a store in a chain which had closed. The only restrictions on soliciting new accounts are that the distributors may not distribute outside the 7-County area serviced by the [Company] nor solicit accounts serviced by other distributors for the [Company] or by Yorkshire foods, a related company" (R.D. Dec., p. 3). Clearly, limiting the territory to New York City and Long Island, which is the area in which the Company can operate, is not control by the Company over location, size and sales practice.

Additionally, the Regional Director concluded that the distributors of independent stores are paid directly by their customers without any aid of the Company and are liable for any losses due to bad checks or credit extended (R.D. Dec., p. 5). These accounts constitute a clear majority, approximately sixty percent, of all customers serviced by Lorenz Schneider distributors (R. 264).\*

Further, and of extreme importance, is the proprietary right that these individuals have in their route. The cost

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\* References to the transcript of this proceeding are identified by a "R" followed by the appropriate page number(s). References to the Company's and the Petitioner's Exhibits are identified as "C. Ex." and "P. Ex.", respectively.

*Schneider's Request for Review*

of a route ranges between \$20,000 and \$30,000 and individuals have paid the amount in full at the time of the purchase (R. 193-98). Also, the distributors "may sell their routes at any time either to the [Company] or to a third party, provided only that a third party purchaser must be approved by the [Company]\* . . . and that in practice distributors have been allowed to sell for whatever price they can get." (R.D. Dec., p. 2). This obviously constitutes a substantial proprietary interest which can be, and is, increased by the efforts of the distributor depending on this ability to increase his sales and solicit new accounts.

Finally, both the Board and the Regional Director apparently rely on the fact that the Company and Frito-Lay establish the prices for merchandise charged to the distributors. The Seventh Circuit, in dealing with this contention, appropriately noted:

"Obviously, the Company fixed the price on its merchandise sold to the distributors. So far as we are aware, that is the ordinary and usual manner of doing business." *Frito-Lay, Inc. v. NLRB*, 385 F.2d at 186.

See also, *Carnation Co. v. NLRB*, 429 F.2d 1130 (9th Cir. 1970); *Meyer Dairy, Inc. v. NLRB*, 429 F.2d 697 (10th Cir. 1970); *NLRB v. Servette, Inc.*, 313 F.2d 67 (9th Cir. 1962).

In conclusion, it must be noted that an obvious operational distinction exists between Lorenz Schneider and Frito-Lay which would favor the finding of independent contractor status for Lorenz Schneider distributors even if Frito-Lay distributors are employees. Frito-Lay is both

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\* This approval has never been denied.

*Schneider's Request for Review*

the manufacturer and prime distributor of its product whereas Lorenz Schneider is merely a conduit, distributing products for several manufacturers. In those instances where prices are established for retail sale and to the retail chain outlets, it is done by the manufacturers. Therefore, whereas Frito-Lay plays an intimate part in the establishment of these prices, Lorenz Schneider, like its distributors, is not involved in this determination.

Accordingly, because of both the absence of conclusive precedent and the conflict between the Board and the court, the Board and not a Regional Director should determine the issue herein. This is especially applicable in this case where the Regional Director's decision may impair the constitutional protection of contracts wherein both parties have agreed to independent contractor status.

*2. The Petitioner Is Not a Labor Organization.*

The Regional Director ignored the record in his determination that the Petitioner is a labor organization rather than a trade association. He relied on the constitution and by-laws of the Petitioner which, based on the testimony of its president, are summarily ignored by the Association. (See attached Brief, pp. 21-26). Therefore, under the facts in this case and pursuant to the recent Board decision in *Douglas Oil Co.*, 197 NLRB No. 42 (1972), the Regional Director should have dismissed the petition because the Petitioner is not a labor organization.

The Regional Director further erred on this issue when he quashed, in part, the Company's subpoena. It is the Company's contention that the minutes of the Petitioner's

*Schneider's Request for Review*

meetings would conclusively prove that it was organized, and operates, as a trade association. These minutes would have demonstrated that the organization was formed to increase profits for independent businessmen and not to operate as a collective bargaining agent. By refusing to allow the Company to obtain these minutes and place them in evidence, the Regional Director permitted the Petitioner to stand on its constitution and by-laws despite their reliability being questioned by the Association's president. (Compare R. 1949, 1962-3 with P. Ex. 1, Articles II, III, VI). Clearly, these minutes must be made available before the Regional Director can conclude that the Petitioner is a labor organization.

Under these circumstances, the Board should grant this Request for Review so that it may determine these important issues.

### 3. *No Election Can Be Held Until January 20, 1973*

Assuming *arguendo* that the Board concludes that the Regional Director was correct in determining that the Petitioner is a labor organization and that the distributors are employees, any election is barred until January 20, 1973 because of Section 9(c)(3) of the Act. On January 20, 1972, an election was held among the "driver-salesmen" of Lorenz Schneider. The Regional Director found that the parties "intended to" exclude these distributors.

Section 9(c)(3), however, is an absolute bar if these individuals were in the bargaining unit. Since their duties are similar to driver salesmen,\* if they are employees they

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\* The primary differences, of course, are that the distributors as independent businessmen control every aspect of their operations and their income is based on profits derived from their own initiative, not salary.



*Schneider's Request for Review*

were eligible to vote in the earlier election. In any case, there is a complete absence of Board precedent on this issue and it is incumbent on the Board to make the appropriate determination in the first instance.

B. THE REGIONAL DIRECTOR'S FINDINGS ON SUBSTANTIAL FACTUAL ISSUES ARE CLEARLY ERRONEOUS AND SUCH ERRORS PREJUDICIALLY AFFECT THE RIGHTS OF THE EMPLOYER.

The Regional Director's decision is based on critical factual findings, which, taken either singularly or collectively, are clearly erroneous and prejudicial. Accordingly, the Board should grant the Company's Request for Review.

1. The Regional Director stated that the Company "leases the majority of trucks, and restricts the use of these trucks to company business" (R. D. Dec., p. 7). First, it is not the Company that leases the trucks, but Schneider Trucks, a separate company (R. 254). Second, each distributor may determine whether to lease from Schneider Trucks or from any other available source, or to purchase a truck (R. 199, 252-59). And third, the limitations established by Schneider Trucks are included in the establishment of the rental fee (C. Ex. 6). If the distributors wanted different terms, they could either lease from any other source or purchase. Finally, the Regional Director found that most distributors garaged their trucks at the Company's warehouse. In fact, except for one distributor, only those who lease from Schneider Trucks garage their trucks

*Schneider's Request for Review*

there (R. 260). Since the Regional Director's factual assumption is wrong, his inclusion of these factors as part of his decision in finding employee status must fall.

2. The Regional Director concluded that the Company "required the distributors to carry only its products" (R. D. Dec., p. 7). In fact, the restriction is only on competitive products, a reasonable business restriction, and in practice distributors sell other noncompetitive products to their customers (R. 265-66). As such, this error is prejudicial to the Company.

3. The Regional Director stated that the Company "assists [distributors] in the solicitation of accounts" (R.D. Dec., p. 7). This is in conflict with the facts and the findings of the Regional Director in the earlier part of his decision that "distributors are free to solicit any open accounts except for new chain stores which are opened by the [Company] and either sold to the distributors or given as a replacement to one who had serviced a store in the chain which had closed" (R.D. Dec., p. 3).

4. The Regional Director found that the Company "decides when customers shall be 'lost' by distributors" (R.D. Dec., p. 7). In reality, it would be a customer of the distributor who would determine that it will not permit a distributor to service him (R. 886). In practicality, no such account has ever been lost.

5. The Regional Director stated that the Company "instructs distributors on how to service accounts" (R.D.

*Schneider's Request for Review*

Dec., p. 7). The only instruction is during the training period of the probationary contract. After that the distributor handles all aspects of his route by himself (R. 229-30, C. Ex. 4A-T).

6. The Regional Director concluded that the Company "retains the right to terminate the agreement under certain circumstances of which it is the sole judge" (R.D. Dec., p. 7). As with all contractual relationships, an aggrieved party may resort to the courts for unreasonable actions by the other party to a contract and the distributors have already taken this action (P. Ex. 18 A-D). Also, under the contracts, arbitration procedures are available for the settlement of disputes (C. Ex. 5).

7. The Regional Director concluded that the Company "effectively controls [the] sale [of the business] by reserving the right to reject any applicant, and by setting down the monetary formula by which said sale shall be transacted" (R.D. Dec., p. 7). The right to reject an applicant is a reasonable limitation in a franchise-type operation and it should be noted that the Company, in respect for its business relationship with these distributors has never rejected an applicant (R. 451). Furthermore, the distributors sell at a price in excess of that listed in the contract, a practice acknowledged by the Regional Director in his decision (R.D. Dec., p. 2). Therefore, this finding of fact prejudices the Company's rights.

8. The Regional Director, in attempting to minimize the essential factor that the distributors may vary from the

*Schneider's Request for Review*

prices suggested by the manufacturers stated that the variance is "only by a few cents" (R.D. Dec. p. 7). It must be recognized that this is an industry in which prices are determined by the cents and a variance of a few cents can be as much as an increase of ten to twenty percent of the sales price.

9. The Regional Director found that upon initial application the distributor fills out, among other forms, "a standard form application for employment" (R.D. Dec., p. 2). The testimony of the Company's witness was that the only form in this regard was a balance sheet form (R. 188-89, C. Ex. 2). The testimony of the Petitioner's witness concerned a single instance and was conclusory and hearsay about a form that was not before the Regional Director (R. 1803).

10. The Regional Director stated that all the distributors' trucks have the name of the primary manufacturer on them (R.D. Dec., p. 4). This, however, is optional and the manufacturer gives an allowance of \$175 to those distributors who want to place the manufacturer's logo on their trucks (R. 255).

11. The Regional Director stated, in support of his contention that the Company controls the price charged to the distributors' customers that "some packages carry a retail price on them and advertisements placed by the manufacturers in trade publications offer a reduction in the normal price for certain promotional purposes." First, the retail price on the package is that charged to the consumer, not



*Schneider's Request for Review*

the retailer. Second, the advertisements do not state a sales price but rather that the amount charged by the distributor, whatever that might be, will be reduced by a certain amount (R. 1002-1004A). And third, in any case, the amount is printed on the packages by the manufacturer and the Regional Director found that the advertisements were placed in the trade papers by the manufacturers, not by Lorenz Schneider (R.D. Dec., p. 5).

12. The Regional Director found that the Company has sent "memoranda . . . to the distributors telling them all to charge the same price . . ." These requirements, however, are that each distributor must charge the same price to all of his customers (the retailers) to avoid violating the Robinson-Patman Act, not that all distributors must charge the same prices (See, C. Ex. 5).

13. The Regional Director found that Company representatives "have called distributors into their office to tell them that a store was not being properly handled . . ." (R.D. Dec., p. 6). This occurs, however, only upon the request of a distributor's customer and the distributors may, and have, ignored these suggestions (R. 168-69).

14. The Regional Director stated that one distributor "had his route taken away from him . . . as a result of dishonesty" (R.D. Dec., p. 6). In fact, however, this distributor's customers would not allow him to service them and, upon his request, the Company repurchased his route (R. 888-92). Therefore, this finding of fact, and the unwar-

*Schneider's Request for Review*

ranted assumption that distributors lose routes, prejudices the Company.

Based upon the foregoing, it is clear that the Regional Director in his decision has made certain erroneous factual conclusions regarding critical issues which severely prejudice the Company's position. On this basis alone the Board should grant review.

## IV

## CONCLUSION

For these reasons, it is respectfully urged that a stay of the election be ordered and that this Request for Review be granted.

Dated: October 20, 1972

Respectfully submitted,

PROSKAUER ROSE GOETZ & MENDELSON  
Attorneys for Lorenz Schneider Co.  
Inc.

300 Park Avenue  
New York, New York 10022

Of Counsel:

Marvin Dicker  
Charles R. Held

**Decision on Review**

203 NLRB No. 45

D—7435

Hyde Park and River Head  
N.Y.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR  
RELATIONS BOARD

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[Caption Omitted]

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[1]

DECISION ON REVIEW

On October 3, 1972, the Regional Director for Region 29 issued a Decision and Direction of Election in the above-entitled proceeding in which he directed an election in the Petitioner's requested unit of distributors, finding, contrary to the Employer's contention, that they are its employees and not independent contractors. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds, *inter alia*, that in finding the distributors involved not to be independent contractors he departed from officially reported precedent and made findings of fact which are clearly erroneous.

By telegraphic order dated January 23, 1973, the National Labor Relations Board granted the request for review insofar as it related to the status of the distributors. Thereafter, the parties filed briefs on review.

203 NLRB No. 45

*Decision on Review*

[2]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, including the briefs on review, and hereby affirms the Regional Director's Decision and Direction of Election,<sup>1</sup> with the following additions:

Contrary to the Employer's contention, the case of *Gold Medal Baking Co., Inc.*, 199 NLRB No. 132, is factually distinguishable. In that case, certain individuals who had a prior history of representation as driver-salesmen employed by the company but who had each signed distributorship agreements with the company in the course of unsuccessful negotiations for a new contract were found to have terminated their employee status and become independent contractor distributors of the company's bakery products. In finding that the company had not reserved to itself control of the means by which the distributors sold and delivered products, the Board noted, *inter alia*, that they were not required by the company to adhere to suggested resale prices to retailers (only 10 percent of which were chain stores) and that they carried out their responsibilities under the distributorship agreements without supervision by the Company.

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<sup>1</sup> The Regional Director's findings and conclusions with respect to the status of the distributors are excerpted from his Decision and attached hereto as an appendix. His findings of fact are substantially supported by the record except with respect to the finding that the Employer permits the distributors to carry only its products. The record establishes that it permits them to sell noncompetitive products; the extent of such sales is undisclosed.



*Decision on Review*

In marked contrast, here, the Employer, as franchised dealer for a number of snack food manufacturers, effectively controls the prices at which the [3] distributors resell to retailers, most of which are chain stores;<sup>2</sup> it requires compliance with a 10-page booklet entitled "Procedures for Operating Independent Distributor Routes";<sup>3</sup> and it em-

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<sup>2</sup> The Employer's practice is to segregate chain stores and independent stores into separate routes. The distributors who have chain store routes, about 28 to 30 individuals, are required by the Employer to abide by prices negotiated between the stores and the manufacturers of the Employer's products. The Employer's control in this area is absolute, since the chain stores pay the distributors through the Employer rather than directly and the Employer computes the distributors' profits on their sales solely on the basis of the negotiated prices. With respect to the distributors who have independent store routes, the Employer substantially controls their prices through the frequent advertisement in trade publications of price discounts on the distributors' merchandise. At times the discounts are stated as a percent, at others they are stated as a specific price below the regular price. Although the Employer's vice president, Kenneth Price, stated that the distributors were free to refuse to offer the discounts (as to which it admittedly does not consult them prior to advertising), he also stated that in instances in which they attempted to refuse the discounts, their customers retaliated by refusing to make further purchases and thereby effectively forced them to grant the discounts.

<sup>3</sup> While some of the provisions in the book of procedures appear only hortatory, the Employer has enforced compliance with certain of them as well as with provisions that are mandatory. For example, although provision 19 indicates that shelving for merchandise is "available at the [Employer's] warehouse . . . if desired," the Employer requires distributors to install additional shelving in their stores if their customers demand it and has installed the shelving itself where distributors refused to do so. There are also examples of enforcement of mandatory provisions. Provision 22 states, "Stores must be served at least once each week, and . . . as many more times each week as is necessary to keep the stands, racks and gondolas adequately supplied with fresh merchandise." In one instance in which two distributors refused because of a

*Decision on Review*

employs distributor representatives who in a number [4] of ways, as found by the Regional Director, oversee the operations of the distributors.<sup>4</sup> We find, therefore, that despite the change in the Employer's method of product distribution whereby it required its route salesmen to execute distributorship agreements, the Employer has not relinquished control over the means by which the distributors carry out their responsibilities under the agreements.

Accordingly, the case is remanded to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election, as [5] modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the date of issuance of this Decision.<sup>5</sup>

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dispute with the Employer to make deliveries on their route for a period of a few days and thus left them undersupplied with merchandise, the Employer had its employees break the padlocks on the distributors' trucks, fill them with merchandise, and make deliveries to the appropriate stores.

<sup>4</sup> Each distributor representative generally oversees 10 routes. They visit the distributors' stores frequently to check on a variety of matters affecting the distributors' sales, including the promptness with which the distributors remove stale merchandise from the shelves, the adequacy and effective location of shelving and promotional material, and the merit or lack thereof in store managers' complaints regarding services rendered. When the representatives meet with the distributors, which they do on the average of once each 3 weeks, they discuss the distributors' route operations and instruct them regarding how to more properly service their accounts. As the Regional Director noted, the representatives report distributors' noncompliance with their instructions to the Employer's general sales manager for further action. The representatives have a direct financial interest in seeing that their instructions are complied with, since the Employer pays them bonuses for increases in sales they help the distributors achieve.

<sup>5</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory

*Decision on Review*

Dated, Washington, D. C.

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Edward B. Miller, Chairman

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John H. Fanning, Member

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John A. Panello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 10 within 7 days of the date of this Decision on Review. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

*Appendix to Decision on Review*

## APPENDIX

## [i]

The Employer is a key distributor of snack foods for the five counties of New York City and Nassau and Suffolk Counties. The primary facilities in question are located in New Hyde Park, New York and Riverhead, New York with several of the individuals in question operating from another privately owned warehouse. Prior to 1967, the individuals in question were called route salesmen and were concededly employees of the Employer. At that time route salesmen and warehousemen were represented by Local 802, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called Local 802. In 1967, the route salesmen became distributors with the concurrent change in status set forth below, and Local 802 ceased representation of them, although it did continue to represent the Employer's warehousemen.

There are currently 52 distributors in the proposed unit. Some of these men were employed as route salesmen for the Employer prior to 1967. In 1967, they purchased their routes from the Employer making large initial down payments. The total purchase price was based upon the average week's sales of the route multiplied by a given factor. Other distributors who joined the Employer later similarly purchased their routes, either from the Employer or from other distributors who wanted to sell.

The distributors themselves may sell their routes at any time, either to the employer or to a third party, provided only that a third party purchaser must be approved by the Employer. The agreement between the Employer and



*Appendix to Decision on Review*

the distributor sets forth the formula by which the price for any such re-sale must be computed. The record indicates, however, that this provision has not been enforced in regard to sales to third persons and that in practice distributors have been allowed to sell for whatever price they can get. Persons seeking to buy available distributorships directly from the Employer are interviewed by the general manager after filling out several forms, including a standard form application for employment. They sign an interim agreement providing for a 60 day probationary period during which either party may change its mind with no forfeiture save that, if the individual has already been trained by the Employer and he changed his mind, he must pay a sum of money for said training. During this probationary period, the individual is taken on the route he will ultimately buy, by a distributor representative whose function is to oversee a given number of assigned routes. The trainee is shown where the stores on the route are located and how to service them properly.


At the end of 60 days the Employer and the individual enter into a formal agreement by which the individual purchases the route from the Employer. He signs a promissory note and the Employer retains a chattel mortgage for the unpaid balance of the purchase price. By the terms of this agreement, the distributor agrees, *inter alia*, to maintain accurate route books and customer books, follow the book of company procedures, and use his best efforts to procure sales and new accounts for the franchised products of the Company without regard to fixed or bounded territory. The agreement may be terminated by the Employer for failure to make payment under the promissory

*Appendix to Decision on Review*

note, for handling competitors' products, for wilful neglect of [ii] customers, for dishonesty, or for several other technical infractions enumerated therein. The current agreements are not terminable at will by either party, although the first agreements entered into by six of the distributors in 1967 did bind the Employer to repurchase the routes upon 30 days' notice from the distributors. The Agreements also specifically state that it is the intent of the parties that the distributors are independent contractors and not employees.

By the terms of the agreement, the profit of the distributors is to be approximately 20 percent, less rebates for those distributors who service chain-store routes. The distributors are free to establish their gross profits, however, in that they may increase the number of customers, either by soliciting new, open accounts or buying individual stops from other distributors. Both chain store and independent store distributors are free to solicit any open accounts except for new chain stores which are opened by the Employer and either sold to the distributors or given as a replacement to one who had serviced a store in the chain which had closed. The only restrictions on soliciting new accounts are that the distributors may not solicit outside the seven-County area serviced by the Employer nor solicit accounts serviced by other distributors for the Employer or by Yorkshire Foods, a related company.

It is clear from the record that there is no day-to-day supervision of the distributors by the Employer. The distributors can arrange the order and frequency with which they service stops as long as they service them at least once a week. They have no set hours of work and can take days



*Appendix to Decision on Review*

off without permission. They can take vacations at their own convenience. The distributors can hire their own vacation replacements or the Employer will provide substitutes to service routes upon request, for a set fee. Distributors are not required to wear any uniform or to report to the warehouses by any given time save only that the warehouse has certain hours of operation within which the distributors must pick up any goods they want, whether for immediate use or to store in their own warehouse facilities.

The Employer does not withhold tax, nor does it provide unemployment or other benefits for distributors. All the distributors drive trucks painted with the name of Wise Potato Chips, the primary manufacturer of goods sold by the Employer. Fourteen of the trucks are distributor-owned, having been bought either from outside truck dealers or from Schneider Trucks, Inc., herein called Schneider, a subsidiary of the Employer. The rest of the trucks are leased either from Schneider or from outside firms. There is no requirement that the distributors use one type of arrangement in preference to another, except that Schneider has stopped renting to Riverhead-based distributors and has given these men the option of purchasing their trucks or renting elsewhere when their current leases run out. Most of the distributors garage their trucks at the Company premises for a monthly fee, although they are not required to do so (except that the leasing arrangement with Schneider provides for the trucks to be kept overnight at a garage consented to by Schneider). The Schneider lease also calls for the trucks to be used only on weekdays and on the snack food route of the lessee.

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[iii]

Except for the two individuals who store goods in their own warehouse facilities, the distributors put in order slips daily for the items they need the following day. The Employer sets the price it will charge the distributors. The price the distributors get from a chain store also has been set, by agreement between the manufacturer, i.e., Wise, and the buyer for the chain. The Employer asserts that prices for the independent customers are a matter for the individual distributor to determine, although it admittedly has suggested prices. The witnesses for the Petitioner state that they are told what prices to charge. Additionally, some packages carry a retail price on them and advertisements placed by the manufacturers in trade publications offer a reduction in the normal price for certain promotional purposes. Finally, memoranda have been sent out by the Employer to the distributors telling them all to charge the same price lest the Employer and/or the distributors be charged with violation of uniform pricing regulations. Thus, it is clear that a very limited amount of leeway is available to the distributors in setting prices.

The distributors who service chain stores do not collect any money. The chain stores pay the manufacturer directly, the latter forwards the money to the Employer, and the employer pays these distributors their profits. The distributors who service independent stores generally are paid cash by their customers. They then pay the Employer for the goods they order according to the terms set in their individual agreements with the Employer. Any loss due to bad checks or due to any credit given by the distributor without specific authorization from the Employer falls upon the distributor.



*Appendix to Decision on Review*

As mentioned above, the Employer employs individuals known as distributor representatives who oversee a certain number of distributor routes. Most of these individuals were admittedly supervisors before the routes were sold in 1967. As such, they occasionally rode with the people under their supervision to check their work. Since the change-over they no longer regularly ride with the distributor. However, the record indicates that they do go to the various customers' stores to check up on the display or merchandise, to see if sufficient merchandise is on the shelves and to ascertain generally what sort of job the distributor is doing. On at least one occasion, a distributor has seen the distributor representative following him on his route in a car and going into each stop after he left it. The distributor representatives have called distributors into their office to tell them that a store was not being properly handled and to tell them how to more properly service an account. If no improvement is shown, the distributor representatives report the situation to the general sales manager for further action. Distributors have received letters from the general sales manager, notifying them that complaints have been received about their service and warning that, if the store refuses to deal with that distributor, the account will be lost to the distributor with no remuneration.

The record reveals that only one distributor has ever had his route taken away from him. This individual lost his route as a result of dishonesty. Insofar as loss of individual stops is concerned, the record shows that the Employer does not take them away from an individual but that, in cases where a store refuses to [iv] deal with a

*Appendix to Decision on Review*

distributor, the Employer will look to see who is at fault. If they determine that it was the customer's fault, they will "protect" the account for their distributor, i.e., no one else can solicit that account. If, however, the Employer determines that the loss was the fault of the distributor, the account may be declared "open" and can be solicited by any one else, with no compensation to the distributor who had the account.

The Board has frequently held that, in determining the status of persons alleged to be independent contractors, the Act requires application of the "right of control" test, stating that, where the person for whom the services are performed retains the right to control the manner and means by which the result is to be accomplished, the relationship is one of employment, rather than that of independent contractor. The resolution of this question depends upon the facts in each case, and no one factor is determinative.<sup>1</sup>

On the basis of the foregoing and the entire record, I am satisfied that the distributors are not independent contractors, although I am aware that the evidence discloses certain factors which are usually associated with independent contractor status. Thus, distributors purchase their trucks, set their own hours of work, and the Employer does not make any payroll deductions from them. On the other hand, the Employer leases the majority of trucks, and restricts the use of these trucks to company business, requires the distributors to carry only its products, unilaterally establishes the price it charges the distributors, as-

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<sup>1</sup> *Borden, Inc.*, 192 NLRB No. 7, 181 NLRB 109; *El Mundo, Inc.*, 167 NLRB 760.

*Appendix to Decision on Review*

sists them in the solicitation of accounts, decides when customers shall be "lost" by distributors, instructs distributors on how to service accounts, and retains the right to terminate the agreement under certain circumstances of which it is the sole judge. Although there is evidence that the distributors do sell or trade their routes, the Employer still effectively controls such sale by reversing the right to reject any applicant, and by setting down the monetary formula by which said sale shall be transacted. In addition, while the distributors may set their own prices to independent customers, it is clear that the prices can vary only by a few cents and that the Employer is concerned with any variance.

In sum, then, all of the record evidence indicates the distributor's compensation is not controlled only by his own efficiency and efforts, but is effected substantially by the decisions and actions of the Employer, whether they be in the form of suggestions and requests or by direct orders. Accordingly, I find the distributors to be employees of the Employer.



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

LORENZ SCHNEIDER CO., INC.

Employer

and

INDEPENDENT ROUTEMAN'S ASSOCIATION

Petitioner

## TYPE OF ELECTION

(Check one)

- ☐ Consent Agreement  
☐ Stipulation  
☐ Board Direction  
☒ RD Direction

(Also check box  
below where  
appropriate)☐ 8(b)(7)

Case No. 29-RC-1980

## CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board,  
IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for  
INDEPENDENT ROUTEMAN'S ASSOCIATION

and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

UNIT: INCLUDED: All distributors employed by the Employer.  
EXCLUDED: All office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in the Act.

Signed at Brooklyn, New York  
On the 29th day of May

19 73

On behalf of  
NATIONAL LABOR RELATIONS BOARD



*Edward M. Tague*  
Regional Director, Region 29  
National Labor Relations Board

Certification of Representative

409a



409a

**Certification of Representative**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practices occurred or is occurring.

Case No.

29-CA-3459

Date Filed

6/28/73

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

Lorenz Schneider Co., Inc.

b. Number of Workers Employed

52

c. Address of Establishment (Street and number, city, State, and ZIP code)

2000 Plaza Avenue  
New Hyde Park, New York 11040

d. Employer Representative to Contact

Milton V. Brown

e. Phone No.  
(516)

328-1400

f. Type of Establishment (Factory, mine, wholesaler, etc.)

New York Metropolitan Area

g. Identify Principal Product or Service

Wise Potatoe Chips, Quinlan  
Pretzels & Old London Products

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 8 (a) (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

## 2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since June 6th, 1973, Lorenz Schneider Co., Inc., has refused to recognize the Independent Routeman's Association or to collectively bargain with the Independent Routeman's Association in spite of the Independent Routeman's Association being duly certified as the sole collective bargaining agent for the driver distributors of the Lorenz Schneider Co., Inc. Annexed hereto and made a part hereof is a photostatic copy of two letters both dated June 6th, 1973, sent to the undersigned law firm by Lorenz Schneider Co., Inc., attesting to same.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

## 3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Independent Routeman's Association

4a. Address (Street and number, city, State, and ZIP code)

114 Old Country Road, Mineola, New York 11501

4b. Telephone No.  
(516)

248-4300

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

NONE

## 6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

ROSENBERG, ROSENBERG &amp; ROCKMAN

Attorneys for:

By

(Signature of representative or person filing charge)

Independent Routeman's Association

(Title, if any)

114 Old Country Road

(516)

Address

Mineola, New York 11501

248-4300

(Telephone number)

6/26/73

(Date)

WHILE ONLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Charge in Case No. 29-CA-3459

410a

410a

**Charge in Case No. 29-CA-3459**

**Complaint and Notice of Hearing in  
Case No. 29-CA-3459**

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
  
REGION 29

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[Caption Omitted]

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COMPLAINT AND NOTICE OF HEARING

It having been charged in Case No. 29-CA-3459 by Independent Routemen's Association, herein called the Union, that Lorenz Schneider Co., Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations—Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in 29-CA-3459 was filed by the Union on June 28, 1973, and served by registered mail upon Respondent on or about June 28, 1973.
2. Respondent is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.



*Complaint and Notice of Hearing  
in Case No. 29-CA-3459*

3. At all times material herein Respondent has maintained its principal office and place of business at 2000 Plaza Avenue, in the town of New Hyde Park, County of Nassau, State of New York, and a warehouse located in the town of Riverhead, County of Suffolk, State of New York, where it is, and has been at all times material herein, engaged in the sale and distribution of food products and related products.

4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its place of business, potato chips, pretzels, nuts, and other goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and delivered to its places of business in interstate commerce directly from states of the United States other than the state in which it is located.

5. Respondent, is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. The Union, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

7. All distributors employed by Respondent, exclusive of all office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in Sec-

*Complaint and Notice of Hearing  
in Case No. 29-CA-3459*

tion 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

8. On or about May 18, 1973, a majority of the employees of Respondent, in the unit described above in paragraph 7, by a secret election conducted under the supervision of the Regional Director for the Twenty Ninth Region of the National Labor Relations Board, designated and selected the Union as their representative for the purposes of collective bargaining representative of the employees in said unit, and at all times since said date, the Union, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining.

9. On or about June 1, 1973 the Union requested Respondent to recognize it as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7, and requested Respondent to bargain collectively with it as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7 with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of such employees.

10. On or about June 6, 1973, Respondent refused, and since said date has continued to refuse to recognize and to bargain collectively with the Union as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7.

*Complaint and Notice of Hearing  
in Case No. 29-CA-3459*

11. By the acts described above in paragraph 10 and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

12. By the acts described above in paragraph 10, and by each of said acts, Respondent refused to bargain collectively, with the representative of its employees, and thereby engaged in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

13. The acts of Respondent described above in paragraph 10, occurring in connection with the operations of Respondent, described above in paragraphs 2 through 5, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 13th day of August, 1973, at 11 a.m., 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear

*Complaint and Notice of Hearing*  
*in Case No. 29-CA-3459*

in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 18th day of July, 1973.

SAMUEL M. KAYNARD  
Regional Director  
National Labor Relations Board  
Region 29  
16 Court Street  
Brooklyn, New York 11241



**Schneider's Answer in Case No. 29-CA-3459**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL  
LABOR RELATIONS BOARD

REGION 29

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[Caption Omitted]

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Respondent, by its attorneys, answering the complaint alleges:

1. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 1 of the complaint, except admits that the charge alleged in paragraph 1 of the complaint was served upon it by registered mail.
2. Denies the allegations contained in paragraphs 6 and 7 of the complaint.
3. Denies the allegations contained in paragraph 8 of the complaint except admits that on or about May 18, 1973, a secret election was conducted under the supervision of the Regional Director for the Twenty Ninth Region wherein a majority of those voting voted in favor of representation by the Independent Routemen's Association.
4. Denies the allegations contained in paragraph 9 of the complaint except admits that on or about June 1, 1973 the

*Schneider's Answer in Case No. 29-CA-3459*

Independent Routemen's Association requested Respondent to engage in collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

5. Denies the allegations contained in paragraph 10 of the complaint except admits that on or about June 6, 1973, Respondent refused and has continued to refuse to recognize and to bargain collectively with the Independent Routemen's Association.

6. Denies the allegations contained in paragraphs 11, 12 and 13 of the complaint.

WHEREFORE, Respondent demands that the complaint be dismissed.

PROSKAUER ROSE GOETZ & MENDELSON  
*Attorneys for Lorenz Schneider Co., Inc.*

By HOWARD LICHTENSTEIN  
Howard Lichtenstein,  
A Member of the Firm  
New York, New York 10022

Dated: New York, New York  
July , 1973

**General Counsel's Motion for Summary Judgment**

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

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[Caption Omitted]

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MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the undersigned Counsel for the General Counsel upon the below listed facts, and the documents and exhibits referred to herein which have been annexed hereto, hereby moves that:

The Board issue an Order prior to and without the necessity of a hearing, containing findings of fact and conclusions of law in accordance with the allegations of the Complaint in the above entitled case, and ordering the Respondent to appropriately remedy the unfair labor practices found; and such other further and different relief be granted as may be proper in the premises.

In support of said Motion Counsel for the General Counsel, shows and alleges that:

1. On April 26, 1972 Independent Routemen's Association herein called the Union filed a petition in Case No. 29-RC-1980 to represent certain employees of Lorenz Schneider Co., Inc., herein called Respondent. (Annexed hereto as Exhibit A)

2. On October 3, 1972 the Regional Director for Region 29, issued a Decision and Direction of Election. (Annexed hereto as Exhibit B)

*General Counsel's Motion for Summary Judgment*

3. On January 26, 1973 the Board granted the Respondent's request for review of the above Decision and Direction. (Annexed hereto as Exhibit C)

4. On April 25, 1973, the Board issued its Decision on Review (203 NLRB No. 45) directing an election to be held. (Annexed hereto as Exhibit D)

5. On May 7th, and May 14, 1973 Stipulations were executed by the parties amending the unit description in the Decision and Direction of Election. (Annexed hereto as Exhibits E and F)

6. On May 14, 1973 the Regional Director issued an Order Amending Decision and Direction of Election. (Annexed hereto as Exhibit G)

7. On May 18, 1973 a secret ballot election was conducted under the supervision of the Regional Director, in which a majority of the employees in the unit described above, selected the Union as their representative for collective bargaining. (Tally of Ballots Annexed hereto as Exhibit H)

8. On May 29, 1973 the Regional Director certified the Union as the exclusive collective bargaining representative of the employees in the above described unit. (Annexed hereto as Exhibit I)

9. On June 1, 1973 the Union sent a letter to Respondent requesting Respondent to commence collective bargaining with it pursuant to said certification. (Annexed hereto as Exhibit J)



*General Counsel's Motion for Summary Judgment*

10. On June 6, 1973 Respondent sent two letters to the Union refusing to bargain with the Union as requested. (Annexed hereto as Exhibits K and L)

11. On June 28, 1973 the Union filed a charge in Case No. 29-CA-3459 alleging that Respondent violated Sections 8(a)(1) and (5) of the Act. (Annexed hereto as Exhibit M)

12. On July 10, 1973 Respondent set forth its statement of position on the above matter in a letter from its attorney to the Regional Director. (Annexed hereto as Exhibit N)

13. On July 12, 1973 a Complaint and Notice of Hearing was issued in the above entitled case scheduling a hearing for August 13, 1973. (Annexed hereto as Exhibit O)

14. On July 24, 1973 Respondent filed its answer to the above Complaint. (Annexed hereto as Exhibit P)

15. Based on the above exhibits it is submitted the attached Motion For Summary Judgment should be granted. It is clear based particularly on Respondent's letters to the Union and its statement of position submitted by its attorney (Exhibits K, L, and M) that Respondent is refusing to bargain with the Union merely to test the certification of the Board in the Courts. Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist which would require the Board to re-examine its decision or the representation proceeding. Respondent has therefore not raised any issue which is properly litigable in an unfair labor practice proceeding

*General Counsel's Motion for Summary Judgment*

and the Motion For Summary Judgment submitted should be granted.<sup>1</sup>

16. As an appropriate remedy for the refusal to bargain herein, it is submitted that in order to accord the employees the services of their selected bargaining representative for a period provided by law, that the initial year of certification should be construed as beginning on the date Respondent commences to bargain in good faith with the Union. See *Mar-Jac Poultry Co.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F. 2d 600 (C.A. 5) cert. denied 379 U.S. 817; *Burnett Construction Co.*, 149 NLRB 1419, 1421 end 356 F. 2d 51 (C.A. 10).

WHEREFORE the undersigned Counsel for the General Counsel respectfully petitions that the relief prayed for in the Motion be granted.

Dated at Brooklyn, New York this 2nd day of August, 1973.

Respectfully submitted,

STEVEN FISH  
Counsel for the General Counsel  
National Labor Relations Board  
Region 29  
16 Court Street  
Brooklyn, New York 11241

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<sup>1</sup> *Medical Ancillary Services Inc.*, 195 NLRB No. 50; *P & B Packers Inc.*, 195 NLRB No. 61.

*General Counsel's Motion for Summary Judgment*

To:

JOHN C. TRUESDALE  
Executive Secretary  
National Labor Relations Board  
Washington, D.C. 20570

LORENZ SCHNEIDER Co.  
2000 Plaza Avenue  
New Hyde Park, New York

INDEPENDENT ROUTEMEN'S ASSOC.  
c/o ROSENBERG, ROSENBERG & ROCKMAN  
114 Old Country Road  
Mineola, New York

PROSKAUER, ROSE, GOETZ &  
MENDELSON Esqs.  
300 Park Avenue  
New York, New York  
Attn: HOWARD LICHTENSTEIN, Esq.

ROSENBERG, ROSENBERG & ROCKMAN  
114 Old Country Road  
Mineola, New York

EXHIBIT A TO MOTION FOR  
SUMMARY JUDGMENT

[REPRESENTATION PETITION]

(See *supra*, page 3a)

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EXHIBIT B TO MOTION FOR  
SUMMARY JUDGMENT

[DECISION AND DIRECTION OF ELECTION]

(See *supra*, pages 370a-381a)



EXHIBIT C TO MOTION FOR  
SUMMARY JUDGMENT

TELEGRAPHIC MESSAGE

TO:

TELETYPE RECEIVED ON JANUARY 23, 1973  
at 2:15 P.M. GSA-LUCY

TO: NLRB, BROOKLYN, N.Y.

FROM: HOWARD F. LeBARON, ASSOC. EXEC.  
SEC., WASH., D.C., NLRB

RE: LORENZ SCHNEIDER CO., INC., 29-RC-1980

EMPLOYER'S REQUEST FOR REVIEW OF  
REGIONAL DIRECTOR'S DECISION AND DIREC-  
TION OF ELECTION, INsofar AS IT RELATES  
TO THE ALLEGED INDEPENDENT CONTRAC-  
TOR STATUS OF THE DISTRIBUTORS IN-  
VOLVED IS HEREBY GRANTED AS IT RAISES  
SUBSTANTIAL ISSUES WARRANTING RE-  
VIEW. THE REQUEST FOR REVIEW IS  
HEREBY DENIED IN ALL OTHER RESPECTS  
AS RAISING NO SUBSTANTIAL ISSUES WAR-  
RANTING REVIEW. THE ELECTION DIRECTED  
HEREIN IS STAYED PENDING DECISION ON  
REVIEW. BY DIRECTION OF THE BOARD.

moi

STANDARD FORM 14

REVISED AUGUST 1967

GSA FPMR (41 CFR) 101-35.306

425a

EXHIBIT D TO MOTION FOR  
SUMMARY JUDGMENT

[DECISION ON REVIEW]

(See *supra*, pages 396a-408a)

EXHIBIT E TO MOTION FOR  
SUMMARY JUDGMENT

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

Case No. 29-RC-1980

---

LORENZ SCHNEIDER Co., Inc.

*Employer*

and

INDEPENDENT ROUTEMEN'S ASSOCIATION

*Petitioner*

---

STIPULATION

The parties hereby agree and stipulate that the unit description in the *Decision and Direction of Election* issued by the Regional Director in Lorenz Schneider Co., Inc., Case No. 29-RC-1980, is amended to read as follows:

All distributors employed by the Employer, excluding all office employees, warehouse employees, all other employees, guards, and supervisors as defined in the Act.

ROSENBERG, ROSENBERG & ROCKMAN  
For Independent Routemen's  
Assoc.

Dated: 5/7/73

.....  
For Lorenz Schneider Co., Inc.,

Dated: .....

EXHIBIT F TO MOTION FOR  
SUMMARY JUDGMENT

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

Case No. 29-RC-1980

---

LORENZ SCHNEIDER Co., INC.

*Employer*

and

INDEPENDENT ROUTEMEN'S ASSOCIATION

*Petitioner*

---

STIPULATION

The parties hereby agree and stipulate that the unit description in the *Decision and Direction of Election* issued by the Regional Director in Lorenz Schneider Co., Inc., Case No. 29-RC-1980, is amended to read as follows:

All distributors employed by the Employer, excluding all office employees, warehouse employees, all other employees, guards, and supervisors as defined in the Act.

.....  
For Independent Routemen's  
Assoc.

Dated: .....

/s/ THOMAS J. HIGGINS

For Lorenz Schneider Co., Inc.,

Dated: 5/14/73



428a

EXHIBIT G TO MOTION FOR  
SUMMARY JUDGMENT

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

Case No. 29-RC-1980

---

LORENZ SCHNEIDER Co., Inc.

*Employer*

and

INDEPENDENT ROUTEMEN'S ASSOCIATION

*Petitioner*

---

ORDER AMENDING DECISION AND  
DIRECTION OF ELECTION

WHEREAS, the parties to the above-captioned proceeding have stipulated and agreed that the unit description as set forth in the Decision and Direction of Election issued on October 3, 1972, should be amended to delete the addresses of the Employer's warehouses,

Now therefore, the undersigned Regional Director having duly considered the matter,

IT IS HEREBY ORDERED that the unit in the above-captioned case be amended to read as follows:

*Exhibit G to Motion for Summary Judgment*

All distributors employed by the Employer, excluding all office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in the Act.


Dated: May 14, 1973  
at Brooklyn, New York

/s/ SAMUEL M. KAYNARD  
Samuel M. Kaynard

Regional Director  
National Labor Relations Board,  
Region 29  
16 Court Street  
Brooklyn, New York 11241

430a

EXHIBIT H TO MOTION FOR  
SUMMARY JUDGMENT

(See Opposite) 



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

*file*

LORENZ SCHNEIDER CO., INC.  
Employer  
and  
INDEPENDENT ROUTEMAN'S ASSOCIATION  
Petitioner

Case No. 29-RC-1980

MAY 13, 1973

Date issued ~~20-05-1973~~

Type of Election:  
(Check one)

(If applicable  
check either  
or both)

- ☐ Stipulation  
☐ Board Direction  
☐ Consent Agreement  
☒ RD Direction

- ☐ 8(b) (7)  
☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 50
2. Void ballots 0
3. Votes cast for PETITIONER 28
4. ~~Not recorded~~
5. ~~Not recorded~~
6. Votes cast against participating labor organization(s) 14
7. Valid votes counted (sum of 3, 4/3, and 5) 42
8. Challenged ballots 6
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 48
10. Challenges are (not) sufficient to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has ~~not~~ been cast for:

Independent Routeman's Association  
For the Regional Director  
Ray T. Kendall

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For LORENZ SCHNEIDER CO., INC.

For INDEPENDENT ROUTEMAN'S ASSOCIATION

For Lorenz Schneider Co.  
Harold Strick

For Harold J. Strick

EXHIBIT H TO MOTION FOR  
SUMMARY JUDGMENT





431a

EXHIBIT H TO MOTION FOR  
SUMMARY JUDGMENT

432a

EXHIBIT I TO MOTION FOR  
SUMMARY JUDGMENT

[CERTIFICATION OF REPRESENTATIVE]

(See *supra*, page 409a)

EXHIBIT J TO MOTION FOR  
SUMMARY JUDGMENT

[Letterhead of Rosenberg, Rosenberg & Rockman, Attorneys and Counselors at Law, 114 Old Country Road, Mineola, N. Y. 11501]

June 1, 1973

Lorenz Schneider Co., Inc.  
2000 Plaza Avenue  
New Hyde Park, N. Y. 11040

Re: Independent Routeman's Association  
Our file No. 73-27-C

Gentlemen:

I enclose herewith photocopy of Certification of Representative by the National Labor Relations Board for the Independent Routeman's Association, covering all distributors employed by the employer.

You are hereby required to forthwith engage in collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

To comply with the requirements of the law, it is hereby suggested that we commence bargaining in good faith and Thursday, June 7th, 1973, at 5:00 P.M., at the offices of Rosenberg, Rosenberg & Rockman, 114 Old Country Road, Mineola, New York, to be the time and place for such negotiations.



*Exhibit J to Motion for Summary Judgment*

If that date, time or place is inconvenient, please advise immediately so that a more convenient arrangement can be agreed upon.

Very truly yours,

ROSENBERG, ROSENBERG & ROCKMAN

By: .....  
HARRY ROSENBERG

HR:FT

CC: Thomas J. Higgins, Esq.

Independent Routeman's Assn.

EXHIBIT K TO MOTION FOR  
SUMMARY JUDGMENT

[Letterhead of Lorenz Schneider Co. Inc., 2000 Plaza Ave.,  
New Hyde Park, N. Y. 11040]

June 6, 1973

Harry Rosenberg, Esq.  
Rosenberg, Rosenberg & Rockman  
114 Old Country Road  
Mineola, N.Y. 11501

Dear Mr. Rosenberg:

Your letter dated June 1, 1973 with the enclosure therein mentioned was received.

We continue to believe that our distributors are "independent contractors" and not "employees" under the National Labor Relations Act.

We intend to continue to pursue this matter through the courts in the firm belief that the decision of the N L R B is erroneous and will ultimately be reversed.

As a result we do NOT recognize the Independent Routeman's Association as Collective Bargaining Representative of our distributors, and we will NOT bargain with you over the terms and conditions of our contracts with our distributors.

We shall continue to treat our Distributors as Independent Contractors which they truly are.

Very truly yours,

/s/ MILTON V. BROWN  
Milton V. Brown

MVB:a

cc: Thomas J. Higgins, Esq.

436a

EXHIBIT L TO MOTION FOR  
SUMMARY JUDGMENT

[Letterhead of Lorenz Schneider Co. Inc., 2000 Plaza Ave.,  
New Hyde Park, N. Y. 11040]

June 6, 1973

Harry Rosenberg, Esq.  
Rosenberg, Rosenberg & Rockman  
110 Old Country Road  
Mineola, N.Y. 11501

Dear Mr. Rosenberg:

This is to supplement my previous letter to you of June 6, 1973.

In addition to the ground stated therein and in belief that the N L R B decision will be reversed we wish to add our belief that such decision is unconstitutional, not supported on substantial evidence on the record considered as a whole, and is erroneous as a matter of law.

Very truly yours,

/s/ MILTON V. BROWN  
Milton V. Brown

MVB:a  
cc: T. J. Higgins, Esq.

437a

EXHIBIT M TO MOTION FOR  
SUMMARY JUDGMENT

[CHARGE FILED IN CASE No. 29-CA-3459]

(See *supra*, page 410a)



EXHIBIT N TO MOTION FOR  
SUMMARY JUDGMENT.

(Letterhead of Proskauer Rose Goetz & Mendelsohn,  
300 Park Avenue, New York, N. Y. 10022)

Writer's Direct Dial Number  
593-9229

July 10, 1973

Samuel M. Kaynard, Esq.  
Regional Director  
National Labor Relations Board  
16 Court Street  
Brooklyn, New York 11241

Re: Lorenz Schneider Co., Inc.  
Case No. 29-CA-3459

Dear Mr. Kaynard:

This letter is to set forth the position of the Company regarding the above-captioned charge. The charge alleges that:

"Since June 6th, 1973, Lorenz Schneider Co., Inc., has refused to recognize the Independent Routeman's Association or to collectively bargain with the Independent Routeman's Association in spite of the Independent Routeman's Association being duly certified as the sole collective bargaining agent for the driver distributors for the Lorenz Schneider Co., Inc."

It is the Employer's position, as it has been since the filing of the petition, that its "driver distributors" are independent contractors and, therefore, excluded from coverage of the Act. The record in the representation case, Case No. 29-RC-1980, as characterized and analyzed by the Em-

*Exhibit N to Motion for Summary Judgment*

ployer in its brief and request for review, requires acceptance of that position. In these circumstances, the Employer believes that on review, the courts will conclude that the "driver distributors" are independent contractors and will refuse to require Lorenz Schneider to recognize and bargain with the Independent Routemen's Association. See, e.g., *Frito-Lay, Inc. v. NLRB*, 385 F.2d 180 (7th Cir. 1967); *Gold Medal Baking Co.*, 199 NLRB No. 132 (1972) and other cases cited in the Company's brief and request for review.

Indeed, for more than five years, the "driver distributors" functioned under agreements that plainly establish their status as independent contractors. Lorenz Schneider maintains that the decisions of the Regional Director and the Board, which treat the "driver distributors" as employees, unconstitutionally impair the contracts in effect between these distributors and the Company—arms' length agreements that are protected by the Constitution.\*

To have these questions of fact and law reviewed and determined by the Court of Appeals, the Company has refused to bargain with the Independent Routemen's Association. We submit that, on reconsideration of this record by the Board and certainly on review, this refusal to bargain will not be found to have been unlawful.

Sincerely yours,

/s/ HOWARD LICHTENSTEIN  
Howard Lichtenstein

HL:jel

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\* For example, the Fifth Amendment affords a due process protection of property. The decisions of the Regional Director and the Board deprive both the Company and the "driver distributors" of property rights pursuant to their agreements.

EXHIBIT O TO MOTION FOR  
SUMMARY JUDGMENT

[COMPLAINT AND NOTICE OF HEARING  
IN CASE No. 29-CA-3459]

(See *supra*, pages 411a-415a)

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EXHIBIT P TO MOTION FOR  
SUMMARY JUDGMENT

[SCHNEIDER'S ANSWER TO COMPLAINT]

(See *supra*, pages 416a-417a)

**Schneider's Statement in Opposition to Motion of  
General Counsel for Summary Judgment and in  
Support of Cross-Motion for Summary Judgment**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL  
LABOR RELATIONS BOARD  
TWENTY-NINTH REGION

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[Caption Omitted]

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STATEMENT IN OPPOSITION TO MOTION OF GENERAL COUNSEL  
FOR SUMMARY JUDGMENT AND RESPONDENT'S CROSS-  
MOTION FOR SUMMARY JUDGMENT

Lorenz Schneider Co., Inc. (the "Company"), by its attorney's Proskauer Rose Goetz & Mendelsohn, files this statement and attached affidavit of Milton V. Brown, President of the Company, in opposition to the Board's motion for summary judgment and cross-motion for summary judgment:

1. The Board has certified as appropriate for collective bargaining a unit which consists solely and exclusively of independent contractors. Such a unit cannot be an appropriate unit for collective bargaining under the provisions of the Labor Management Relations Act, 1947.
2. The Board, in certifying the unit herein, exceeded its authority, which is limited solely to certified units of "employees" as that term is defined in the Act.



*Schneider's Statement in Opposition to Motion  
and in Support of Cross-Motion*

3. The Board's unit determination violates Amendment V of the Constitution of the United States of America in that it deprives both the independent contractors and the Company of property without due process of law.

4. The Board's unit determination violates the Labor Management Relations Act, 1947, because it certifies a trade organization as a collective bargaining agent.

WHEREFORE, based on this statement and the attached affidavit, the Company moves:

1. To dismiss the complaint on the grounds that:

(a) the Board has exceeded its authority under the Act by finding appropriate a unit composed of independent contractors;

(b) the Board's unit determination violates Amendment V to the Constitution of the United States of America, and

(c) the Board has exceeded its authority under the Act by certifying a trade organization as a collective bargaining agent.

2. To revoke the certification of the Independent Routemen's Association on the grounds that:

(a) the Board has exceeded its authority under the Act by finding appropriate a unit composed of independent contractors;

(b) the Board's unit determination violates Amendment V to the Constitution of the United States of America, and

*Schneider's Statement in Opposition to Motion  
and in Support of Cross-Motion*

(c) the Board has exceeded its authority under the Act by certifying a trade organization as a collective bargaining agent.

Dated: August 30, 1973  
New York, New York

Respectfully submitted,

PROSKAUER ROSE GOETZ & MENDELSON

By MARVIN DICKER

Marvin Dicker

A Member of the Firm

*Attorneys for Lorenz Schneider Co., Inc.*

300 Park Avenue

New York, New York 10022

**Affidavit of Milton V. Brown in Opposition to Motion  
and in Support of Cross-Motion**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL  
LABOR RELATIONS BOARD  
TWENTY-NINTH REGION

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[Caption Omitted]

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STATE OF NEW YORK,  
COUNTY OF NEW YORK, ss.:

MILTON V. BROWN, being duly sworn, deposes and says:

1. I am President of Lorenz Schneider Co., Inc. (the "Company"), respondent in this matter. I make this affidavit in opposition to the Board's motion for summary judgment and in support of the Company's cross-motion for summary judgment.

2. The General Counsel has moved for summary judgment based on the facts set forth in his motion and the documents and exhibits appended thereto. In opposition to that motion and in support of the Company's cross-motion for summary judgment, as well as completing the record before the Board, I am submitting this affidavit to correct certain conclusions reached by the Board in its decision in the underlying representation case, 29-RC-1980; to answer certain matters raised by the Board; and to clarify some ambiguities in the record.

*Affidavit of Milton V. Brown in Opposition to  
Motion and in Support of Cross-Motion*

3. The Board concluded that the Company "effectively controls the prices at which the distributors resell to retailers, most of which are chain stores." In fact, however, the manufacturers, Wise Potato Chips, Quinlan Pretzels and Old London, none of which is related to the Company, and not the Company, determine the price charged to chain stores. The manufacturer negotiates directly with the chain central buying office. The chain's central buying office and the manufacturer fix the price for the product for all purchases in a large geographic area which covers stores in many states including stores outside of the Company's franchise area. After the price is agreed upon the Company is informed of that price. The distributors who service independent stores, which are sixty percent of all of the distributors' customers, are free to, and do, alter the suggested sales price.

4. The Board concluded also that the Company effectively controlled prices charged by distributors to independent stores "due to frequent advertising in trade publications on price discounts on the distributor's merchandise." These discounts are originated and given by the manufacturer to the Company, which in turn passes them along to the distributors. The purpose of the discounts is to promote products and to increase sales. The stated discounts are all that are listed. Because distributors have the option to, but do not, pass along these discounts to all customers it adds considerably to the distributors' profits since they receive such discounts on all purchases. Many distributors take advantage of these discounts to stock up



*Affidavit of Milton V. Brown in Opposition to  
Motion and in Support of Cross-Motion*

on the products and resell them later, after the promotion period is closed, at the regular price.

5. The Board also concluded that the Company effectively controls prices charged by distributors to the independent stores by reason of the alleged fact that customers would refuse to deal with distributors who did not grant discounts. The evidence is uncontroverted that the Company has not control over these discounts, either as to their origination or as to whether they are passed along to the customer. And, these discounts have no effect on the distributor. For example, if the distributor sets a price of \$1.00 a dozen (with a cost to the distributor of \$.80 a dozen) and the manufacturer grants a \$.10 discount, the distributor's profit margin remains \$.20 (\$.90 paid by customer, \$.70 paid by distributor), if the distributor passes along the manufacturer's discount. If he does not do so, the distributor's profit increases to \$.30, and whether the distributor passes this discount along is a matter solely within the distributor's discretion and not subject to the Company's control.

6. The Board emphasized the Company's promulgation of a booklet of rules and procedures as demonstrating that the distributors are employees. This booklet was meant to establish guidelines for the franchisees as well as instructions for new purchasers. It is common and necessary in a franchise business for the franchisor to establish specific guidelines for operations and, in fact, the Company has less restrictive standards than many other franchisors. The conclusion that these guidelines establish an employee-

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employer relationship will lead to the conclusion that every franchise arrangement is an employer employee relationship.

7. In support of this conclusion that the Company's procedure booklet established mandatory conditions for distributors, the Board cited an incident where the Company serviced routes of two distributors who allegedly had a dispute with the Company. In fact, these two distributors had informed the Company that they were abandoning their routes. After continual efforts to contact these distributors over a three-day period were unsuccessful, the Company had no recourse but to service the abandoned routes in order to protect this investment and its obligation to the manufacturers of the products that it distributes. Failure to service regularly will cause permanent loss of customers and could lead to a forfeiture of the Company's franchise.

8. The Board found that the Company's employees classified as distributor representatives "oversee" the distributors. The primary function of these employees is to promote the product of the manufacturers that Lorenz Schneider distributes and they in no way supervise the distributors. Although they may visit distributors' customers, it is for product promotion purposes only. In some instances, questions may be raised and should be directed to the distributor and the distributor representative may act as conduit between the distributor and his customer. He may also discuss problems with the distributor. This, however, is always at the instigation and request of the

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distributor. In many instances distributors have problems with various customers which they want to discuss with someone and therefore turn to the distributor representative. Although the distributor representative may deal with the distributor on these problems, he is not functioning as a supervisor but rather dealing on a personal level with the distributors, in an effort to help promote the sales of the manufacturers' products. Since the primary function of the distributor representatives is to perform whatever service will facilitate and promote the sale of the products, it follows that any requested help the distributor representative can render to the distributor falls within the scope of his duties and serves the interests of the Company.

9. The Board concluded that when the Company converted its method of operation and sold its routes to independent businessmen in 1967 all salesmen were "required" to sign distributorship agreements. This is patently in error. The uncontroverted record evidence is that each salesman employee was offered the opportunity to purchase the route and those who did not, continued operating as employees pursuant to a collective bargaining agreement with Local 802 of the Teamsters. No individual was required to purchase a route and, in fact, not all did. Those who purchased their routes did so individually and each negotiated separately at different times over the terms and conditions of this contract.

10. The Board neglected to consider the fact that several other governmental agencies have found these distributors to be independent businessmen. For example, during the annual audit of the Company's income tax return, the

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Internal Revenue Service has questioned the status of the distributors and after investigation has accepted the fact that they are truly independent businessmen and not employees.

11. The Board also appended part of the Regional Director's decision in support of its decision. This decision contained erroneous conclusions and errors which, if corrected would eliminate any justification for the erroneous holding and would demonstrate that the distributors are independent contractors.

12. The Regional Director, in concluding that the distributors are employees, relied on the fact that the Company establishes the price it charges the distributors. This, however, is the normal method of conducting business and is consonant with the same practice that prevails between the manufacturers and the Company, where the manufacturers set the prices charged the Company. The seller, not the buyer, must establish the selling price. The use of the Regional Director's rationale would affect all arm's length transactions.

13. The Regional Director also found as indicative of employee status the fact that chain store distributors do not make collections from the individual chain stores. First, it should be noted that sixty percent of all customers are independent stores, not chains. Second, as the Regional director recognized, the payments are made directly by the chain central accounting office to the manufacturer, not the Company, a procedure necessitated and mandated by the



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operational structure of the chain stores and their buying practices.

14. The Regional Director concluded that the Company is the sole judge in determining contract terminations. Many of the contracts, however, have arbitration provisions for disputes between the parties. Indeed, under this rationale, the distributor is the sole judge of the Company's breach of contract. And, in any case, as in any contractual relationship, an alleged aggrieved party may seek enforcement of contractual rights in the courts and these distributors have instituted actions against the Company in the New York Supreme Court asserting rights under their contracts and demanding arbitration.

15. The Regional Director relied on memoranda that the Company sent to its distributors, stating that prices should be uniform. This is misleading. These memoranda merely informed the distributors that in order to comply with the Robinson-Patman Act, each individual distributor must charge uniform prices to all his similarly situated customers. This is not a requirement that all distributors must charge uniform prices and in practice they do not.

16. The Regional Director, in answering the Company's contention that distributors have the option and do vary the prices charged to their customers, found that these distributors have a "very limited amount of leeway" because the variance is only a few cents. This is a business, however, of pennies. A variation of a few cents can amount to anywhere from a 5% to 20% change in the sales price

*Affidavit of Milton V. Brown in Opposition to  
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to the distributors' customers. The significant fact, however, is that the distributors do have leeway, the extent of which is not prescribed by the Company but is mandated by the economics of the business.

17. The Regional Director found "that only one distributor has ever had his route taken away from him." This is inaccurate. No distributor has ever had a route taken away. The example relied upon by the Regional Director was a case where a distributor was accused of dishonesty by a chain store. As a result the chain would not permit him to service any stores in the chain. Since this meant a substantial loss of business, the distributor requested that the Company purchase his route. The Company did so as an accommodation to him. His route was purchased at its fair market value in accordance with the terms of his contract.

18. The Regional Director concluded that the contract between the Company and the distributor establishes a method to compute the value of the route upon sale. In fact, the established method of computation is only for a resale of the route to the Company and distributors may sell, and have been sold their routes, to third parties at any price obtainable.

MILTON V. BROWN

[Jurat omitted in printing]

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**Schneider's Letter to Board Dated  
November 7, 1973 and Attachment**

593-9422

November 7, 1973.

Mr. John C. Truesdale  
Executive Secretary  
National Labor Relations Board  
Washington D.C. 20507

Re: Lorenz Schneider Co. Inc.  
Independent Routemen's Assoc.  
Case #29-CA-3459

Dear Sir:

The above captioned case is now pending before the National Labor Relations Board on a motion for summary judgment by the General Counsel and a cross motion for summary judgment by the Respondent. Attached to the cross motion for summary judgment is the affidavit of Mr. Milton V. Brown in support of the motion. In paragraph "10" of that affidavit Mr. Brown refers to an Internal Revenue Service determination. That determination was not attached to the affidavit, since the respondent at the time of filing the affidavit had not received a copy of it. We are now enclosing an original and seven copies of that determination, which we request be attached to and made part

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*Schneider's Letter to Board Dated November 7, 1973*

of Mr. Brown's affidavit in support to the cross motion for summary judgment.

Very truly yours,

MARVIN DICKER.

MD:pb

cc's Rosenberg, Rosenberg & Rockman  
Independent Routemen's Assoc. Counsel  
114 Old Country Road  
Mineola, New York.

bcc. Kalman Nulman  
295 Madison, N.Y. N.Y.

Steven Fish, Esq.  
Counsel for the General  
Counsel  
National Labor Relations  
Board  
Region 29  
16 Court St.  
Brooklyn N.Y. 11201



*Attachment to Schneider's Letter of November 7, 1973*

(Letterhead of Internal Revenue Service  
Washington, D.C. 20224)

Date: 25 Sep 1973

In reply refer to T:I:I:3:1

Lorenz-Schneider Co., Inc.  
2000 Plaza Avenue  
New Hyde Park, New York 11040

Gentlemen:

This is in reply to your request for a ruling concerning the status, for purposes of Federal employment taxes, including income tax withholding, of owner-drivers (distributors) engaged in the distribution of snack food products which are represented by Lorenz-Schneider Co., Inc. (Lorenz). You, as well as several of your distributors, have submitted the SS-8 forms which enable us to issue such a ruling.

It is indicated that distributors of products represented by Lorenz were originally treated as employees. However, in 1967, you permitted the distributors to purchase their routes. The relationship between Lorenz and the distributors is now evidenced by formal, written contracts. The many samples of these contracts, forwarded to us in accordance with the SS-8 forms, reveal that the contracts are substantially the same, with the exception of the original purchase price per individual route.

The contracts call for the distributors to use their best efforts to distribute and increase the sales of products represented by Lorenz, without regard to fixed territory, but within the franchised area of Lorenz. Lorenz sells mer-

*Attachment to Schneider's Letter of November 7, 1973*

chandise to the distributors at fixed, listed prices. Distributors sell the merchandise to chain stores on their respective routes at whatever price they wish to establish. Distributors are to keep accurate route books for evaluation in case of subsequent route sale, government tax evaluation, or the adding of new routes. Clause #8 of the contract recognizes the distributors as independent contractors. Clause #9 provides that distributors are to place their own names on sales tickets, route numbers and store pads. Resales of routes, or termination of the contracts, are handled through Lorenz. Lorenz may cancel contracts with distributors for such things as failure to make payments for merchandise, handling of directly competitive products, and lengthy illnesses.

Further, the information supplied by ten named distributors, in answering Form SS-8 questions, is in substantial agreement with information supplied by Lorenz. The information indicates that distributors perform no services on Lorenz' premises, establish their own routines, and obtain and pursue their own leads. Lorenz may supply leads, however, distributors are not required to follow them up. Distributors may set their own retail prices for resale of merchandise to the chain stores on their respective routes. They need not report to you with respect to daily business activities. They receive instructions only during an initial training period. They are not required to meet a minimum quota of sales. Equipment and supplies such as sales pads, display stands, and shelving may be purchased from Lorenz by the distributors. Distributors buy or lease trucks on their own, and several run their

*Attachment to Schneider's Letter of November 7, 1973*

own warehouses, individually, or in combination with other distributors.

Distributors need not perform their services personally. Indeed, one distributor employs 15 helpers. Helpers may be engaged without Lorenz' consent, and, furthermore, are strictly under the control of the distributor.

The distributor's profits represent the difference between the price they pay for merchandise from Lorenz and the price at which they sell to retail stores. Distributors pay all their expenses and do not account for them to Lorenz. They are not eligible for bonuses, sick pay, or pensions. As per contract, distributors operate under their own names and may handle goods from companies other than Lorenz if such goods are not directly competitive. Distributors set their own working hours and work routines. If any merchandise should spoil, distributors may return it to Lorenz and receive a percentage allowance based on its value.

Individuals are employees for Federal employment tax purposes if they have the status of employees under the usual common law rules applicable in determining the employer-employee relationship. Guides for determining that status are found in three substantially similar sections of the Employment Tax Regulations, namely, sections 31.3121(d)-1(c), 31.3306(i)-1, and 31.3401(c)-1. For example, it is pointed out in subparagraph (2) of section 31.3121(d)-1(c) of the regulations that an employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be

*Attachment to Schneider's Letter of November 7, 1973*

accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient if he has the right to do so.

In Rev. Rul. 55-593, 1955-2 C.B. 610, the Internal Revenue Service held that owner-drivers of trucks and drivers of rented trucks who, pursuant to written agreements, deliver articles of merchandise for a company at specified rates, receive no payment for articles not delivered, pay all their operating expenses including insurance coverage, and are not subject in the performance of the services to the direction and control of the company, are not employees thereof for Federal employment tax purposes. The drivers are independent contractors and are the employers for Federal employment tax purposes of any individuals engaged by them to perform services under their direction and control.

Similarly, in Rev. Rul. 57-63, 1957-1 C.B. 321, the Service held that there was no employer-employee relationship between vendors who sold ice cream in residential areas, for an ice cream dealer, where the vendors rented trucks from the dealer, made their own gasoline payments, did not have to meet a minimum quota of sales, set their own work hours, established their own sales area, but were required to sell at a fixed price and return unsold merchandise to the dealer. The vendors worked on a day-to-day basis and the dealer had no preferred call on their services. It was



*Attachment to Schneider's Letter of November 7, 1973*

held that the dealer neither exercised nor had the right to exercise such control over the vendors in the performance of their services as was necessary under the usual common law rules to establish the employer-employee relationship.

In the instant case, Lorenz neither exercises, nor does it have the right to exercise, control over the distributors as to how they shall conduct themselves in the performance of their services. No instructions in this regard are issued, nor are frequent business reports required of the distributors. They may operate under their own names without interference from Lorenz and are not reimbursed for any expenses incurred. Accordingly, it is held that the distributors are not common law employees for purposes of Federal employment taxes and income tax withholding.

It is further held that the distributors are not "statutory employees" as "agent-drivers" for purposes of the Federal Insurance Contributions Act under section 3121(d)(3)(A), and the Federal Unemployment Tax Act under section 3306(i) of the Internal Revenue Code of 1954.

In accordance with the power of attorney on file in this office, we are sending a copy of this ruling to Mr. Stephen W. McKessey of Coopers & Lybrand, 1251 Avenue of the Americas, New York, New York 10020.

Sincerely yours,

LESTER W. UTTER  
Chief, Individual Income Tax Branch

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**Schneider's Letter to Board Dated  
February 12, 1974 and Attachments**

593-9442

February 12, 1974

Mr. John C. Truesdale  
Executive Secretary  
National Labor Relations Board  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C.

Re: Lorenz Schneider Co., Inc.  
(Independent Routemen's Association)  
Case No. 29-CA-3459

Dear Mr. Truesdale:

By letter dated November 16, 1973, Marc A. Rosenberg, counsel for the Independent Routemen's Association, charging party herein, questioned whether the Internal Revenue Service was fully apprised of all relevant facts in making its determination that the distributors who are the subject of this proceeding are independent businessmen. A copy of Mr. Rosenberg's letter was sent to the Internal Revenue Service. Thereafter, by letter dated November 29, 1973, we informed you that the Internal Revenue Service was given all the relevant information, including everything raised in Mr. Rosenberg's letter.

We have received a letter from Virgil L. Richmond, Acting Chief, Individual Income Tax Branch of the Internal Revenue Service in response to a letter from our account-

*Schneider's Letter to Board Dated February 12, 1974*

ants forwarding Mr. Rosenberg's letter of November 16. The IRS confirms our letter of November 29 that it was in possession of all relevant information, including everything raised in Mr. Rosenberg's letter, prior to determining that the Company's distributors are independent businessmen. A copy of our accountants' letter and the response of the IRS thereto is herewith enclosed.

If you should have any further questions with regard to this issue or any other issue in this case, please call me.

Sincerely yours,

MARVIN DICKER

MD/sf

Enclosure

cc: Marc A. Rosenberg, Esq.  
Stephen Fish, Esq.

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*Attachment to Schneider's Letter of  
February 12, 1974*

(Letterhead of Internal Revenue Service,  
Washington, D. C. 20224)

Date: 18 Jan 1974

In reply refer to T:I:I:3:1

Lorenz-Schneider Co., Inc.  
c/o Coopers & Lybrand  
1251 Avenue of the Americas  
New York, N. Y. 10020

Gentlemen:

This is in response to your letter of December 6, 1973, in which you refer to a letter sent to us by Marc A. Rosenberg, attorney for the Independent Routeman's Association.

Mr. Rosenberg expresses disagreement with our ruling of September 25, 1973, to Lorenz-Schneider Co., Inc., and suggests that we may not have had all the information necessary to issue such a ruling. Specifically, he suggests that we were not in possession of a book of procedures concerning the workers in question, and that we were not aware of a related decision by the National Labor Relations Board.

We wish to confirm that we were, at the time of the ruling, in possession of these items. In addition, we had the benefit of detailed information supplied by the drivers themselves in response to the SS-8 questionnaires routinely sent to workers in cases involving "employer-employee" determinations.

We appreciate your concern in this matter.

Sincerely yours,

VIRGIL L. RICHMOND  
Acting Chief, Individual Income Tax Branch



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*Attachment to Schneider's Letter of  
February 12, 1974*

December 6, 1973

Mr. Lester W. Utter  
Chief, Individual Income Tax Branch  
Internal Revenue Service  
Washington, D. C. 20224

Re: Lorenz Schneider Co., Inc.  
T:I:I:3:1

Dear Mr. Utter:

We have received a copy of a letter, dated November 16, 1973, signed by Mr. Rosenberg, Attorney for Independent Routeman's Association, a copy of which we understand was also sent to you. Although this letter is addressed to Mr. Truesdale of the National Labor Relations Board, its contents involve the Internal Revenue ruling letter dated November 1, 1973, which was signed by you.

Mr. Rosenberg suggests in his letter that the Internal Revenue Service was not aware of the National Labor Relations Board participation in this matter. He further indicates that we tried to "hoodwink" the Internal Revenue Service by not including a copy of the book of procedures which, as he states, is an integral part of the contract.

We would like to state, and you can certainly verify in your files, that we did, in fact, attach to or include in our request for ruling the National Labor Relations Board decisions and the book of procedures, in addition to several other relevant attachments.

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*Attachment to Schneider's Letter of  
February 12, 1974*

We are enclosing for your information a copy of our attorney's letter to Mr. Truesdale in response to that written by Mr. Rosenberg.

If you have any questions regarding this matter, kindly call Harold Swartz in our Washington office at (202) 223-1700.

Very truly yours,

SWMcK :je  
Enclosures

cc: Harold Swartz  
C&L—Washington  
S. McKessy  
T. Devine  
Files

**Decision and Order Dated February 22, 1974**

209 NLRB No. 16

D—8139  
Hyde Park and  
Riverhead, N. Y.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD**

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[Caption Omitted]

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[1]

**DECISION AND ORDER**

Upon a charge filed on June 28, 1973, by Independent Routemen's Association, herein called the Union, and duly served on Lorenz Schneider Co., Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on July 12, 1973 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 29, 1973, following a Board election in Case 29-RC-1980 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropri-

*Decision and Order Dated February 22, 1974*

ate;<sup>1</sup> and that, commencing [2] on or about June 6, 1973, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On July 24, 1973, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 6, 1973, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 14, 1973, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice to Show Cause, entitled "Statement in Opposition to Motion of General Counsel for Summary Judgment and Respondent's Cross Motion for Summary Judgment."<sup>2</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National

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<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 29-RC-1980 as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151, enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

<sup>2</sup> On November 9, 1973, Respondent filed with the Board a determination of the Internal Revenue Service, more fully described in fn. 5, below. On November 21, 1973, the Union filed a response thereto. On December 10, 1973, Respondent filed a request to reopen the proceedings accompanied by the statements of two of



*Decision and Order Dated February 22, 1974*

Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**RULING ON THE MOTION FOR SUMMARY JUDGMENT**

In its answer to the complaint and its response to the Notice to Show Cause, Respondent contends that the complaint should be dismissed and the Certification of Representative issued in Case 29-RC-1980 should be revoked because the [3] Board erred in certain determinations made therein, and that, contrary to those determinations, the distributors involved herein, also at times called driver-salesmen, are independent contractors rather than employees; accordingly, the unit of such distributors is inappropriate, and the Union of such distributors is a trade association rather than a labor organization.<sup>3</sup>

Our review of the record in the underlying representation case indicates that on October 3, 1972, after a hearing, the Regional Director issued his Decision and Direction of Election in which he decided the above-described and other

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the distributors, to which the Union also filed a response. Respondent's request to reopen the proceeding is hereby denied as lacking in merit.

<sup>3</sup> Although the answer to the complaint denies the fact and date of the filing of the charge for lack of sufficient information, the answer does admit service of the charge and the General Counsel's Motion for Summary Judgment reiterates the allegations concerning the filing of the charge and appends a copy of the charge, and of the Respondent's July 10, 1973, Statement of Position thereon. However, the Respondent's response to the Notice to Show Cause neither alludes to nor controverts these allegations or the contents of the appended documents. In these circumstances, we deem Respondent to have abandoned its denials of the above-mentioned allegations and find them to be admitted and true.

*Decision and Order Dated February 22, 1974*

issues adversely to the Respondent. Thereafter, the Respondent filed a request for review in which it contended that certain of the Regional Director's findings were erroneous. By Order dated January 23, 1973, the Board granted the request for review insofar as it related to the employee status of the distributors, and denied it in all other respects. Subsequently, on April 25, 1973, the Board issued its own Decision on Review,<sup>4</sup> in which it affirmed the Regional Director's findings that the distributors were employees and remanded the case to the Regional Director to conduct an election pursuant to his Decision and Direction of Election. The Union having received a majority of the votes cast in the election conducted on May 18, 1973, the Regional Director, on May 29, 1973, certified the Union as the exclusive bargaining representative of the employees in the appropriate unit.

## [4]

Respondent's response to the Notice to Show Cause includes an affidavit which contains assertions of fact at variance with the findings of fact made in the Board's Decision on Review.<sup>5</sup> However, assuming that some of the asser-

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<sup>4</sup> 203 NLRB No. 45.

<sup>5</sup> As noted in fn. 2 above, Respondent filed with the Board a ruling of the Internal Revenue Service. That ruling, which was made on September 25, 1973, and amended November 1, 1973, finds the distributors involved herein to be independent contractors. While the ruling of another Government agency is a factor to be considered, we conclude such ruling is insufficient to warrant a revision in our findings herein for the following reasons: (1) Our determination was based on a record developed after a hearing in which the parties herein were given an opportunity to present witnesses and cross-examination, whereas the IRS ruling recites that it was based on SS-8 forms submitted to the IRS by Respondent and 10 distributors; (2) our ruling, which was based on a

*Decision and Order Dated February 22, 1974*

tions other than those described in footnote 5, below, are made here for the first time, Respondent does not contend that they are newly discovered or previously unavailable evidence or constitute special circumstances.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>a</sup>

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable [5] evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation pro-

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fully developed record, contains one crucial finding that is at variance with the IRS finding, namely, that distributors received instructions in other than their training periods; (3) the IRS ruling issued on September 25, 1973, which was almost 4 months after our Decision on Review herein and more than a year after our hearing was held, made no mention of either our Decision or the record developed in the representation case and there is no indication that IRS had any knowledge of them; and (4) lastly, this case is unlike *Imperial Garden Growers*, 91 NLRB 1034, and *Pan American World Airways, Inc.*, 115 NLRB 493, where the Board there deferred to the rulings of other departments or agencies which it considered to have primary jurisdiction in a field. In the circumstances previously noted, we conclude that the IRS ruling should not be considered as controlling.

<sup>a</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

*Decision and Order Dated February 22, 1974*

ceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.<sup>7</sup> We shall, accordingly, grant the General Counsel's Motion for Summary Judgment, and deny Respondent's Cross-Motion for Summary Judgment and its motion to revoke the certification.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

Respondent, Lorenz Schneider Co., Inc., is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

At all times material herein Respondent has maintained its principal office and place of business at 2000 Plaza Avenue, in the town of New Hyde Park, county of Nassau, State of New York, and a warehouse located in the town of Riverhead, county of Suffolk, State of New York, where it is, and has been at all times material herein, engaged in the sale and distribution of food products and related products.

During the past year, which period is representative of its annual operations generally, Respondent, in the course

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<sup>7</sup> As the Respondent filed no answer to pars. 2, 3, 4, and 5 of the complaint concerning the Respondent's corporate status, its business, commerce data, and status as an employer engaged in commerce under the Act, the allegations are deemed to be admitted and found to be true.



*Decision and Order Dated February 22, 1974*

and conduct of its business, purchased and caused to be transported and delivered to its place of business, potato chips, pretzels, nuts, and other goods and materials valued in excess of \$50,000 of which goods and materials valued in excess of \$50,000 were transported and [6] delivered to its places of business in interstate commerce directly from States of the United States other than the State in which it is located.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Independent Routemen's Association is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All distributors employed by Respondent, exclusive of all office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in Section 2(11) of the Act.

*Decision and Order Dated February 22, 1974*

## 2. The certification

On May 18, 1973, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 29 designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on May 29, 1973, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

[7]

*B. The Request to Bargain and Respondent's Refusal*

Commencing on or about June 1, 1973, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about June 6, 1973, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since June 6, 1973, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

*Decision and Order Dated February 22, 1974*

IV. The Effect of the Unfair Labor Practices Upon  
Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain [8] collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1413, 1421, enfd. 350 F.2d 57 (C.A. 10).

*Decision and Order Dated February 22, 1974*

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Lorenz Schneider Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Independent Routemen's Association is a labor organization within the meaning of Section 2(5) of the Act.

3. All distributors employed by Respondent, exclusive of all office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in Section 2 (11) of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since May 29, 1973, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

[9]

5. By refusing on or about June 6, 1973, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.



*Decision and Order Dated February 22, 1974*

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Lorenz Schneider Co., Inc., Hyde Park and Riverhead, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment, with Independent Routemen's Association as the exclusive bargaining representative of its employees in the following appropriate unit:

All distributors employed by Respondent, exclusive of all office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in Section 2(11) of the Act.

*Decision and Order Dated February 22, 1974*

[10]

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Hyde Park, New York, office and Riverhead, New York, warehouse copies of the attached notice marked "Appendix."<sup>8</sup> Copies of said notice, on forms provided by the Regional Director for Region 29 after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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<sup>8</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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*Decision and Order Dated February 22, 1974*

[11]

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C. Feb. 22, 1974

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EDWARD B. MILLER, Chairman

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JOHN H. FANNING, Member

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JOHN A. PANELLO, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

*Appendix to Decision and Order*

APPENDIX

NOTICE TO EMPLOYEES

Post by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Independent Routemen's Association as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All distributors employed by Respondent, exclusive of all office clerical employees, warehouse employees, all other employees, guards and supervisors as defined in Section 2(11) of the Act.

LORENZ SCHNEIDER Co., INC.

.....  
(Employer)

Dated ..... By .....  
(Representative) (Title)



*Appendix to Decision and Order*

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 212-596-3535.

**Order Amending Decision and Order Dated  
February 27, 1974**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD

Case 29-CA-3459

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LORENZ SCHNEIDER Co., INC.

and

INDEPENDENT ROUTEMEN'S ASSOCIATION

---

**ORDER AMENDING DECISION AND ORDER**

On February 22, 1974, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding.<sup>1</sup> At approximately the same time, Respondent filed with the Board a letter dated February 12, 1974, and enclosed therewith a reproduction of a letter dated January 18, 1974, from the Acting Chief, Individual Income Tax Branch, Internal Revenue Service which states that at the time of its ruling that the individuals involved herein were independent contractors, IRS had in its possession a book of procedures and was "aware of a related decision by the National Labor Relations Board".

The Board having duly considered the matter,

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<sup>1</sup> 209 NLRB No. 16.

*Order Amending Decision and Order Dated  
February 27, 1974*

IT IS HEREBY ORDERED that footnote 5 of its Decision and Order be amended by inserting a semi-colon after the word "case" in numbered sub-clause 3 and deleting the language "and there is no indication that IRS had any knowledge of them";

In all other respects, the Board hereby reaffirms its Decision and Order.

Dated, Washington, D. C., February 27, 1974.

By direction of the Board:

GEORGE A. LEET  
Associate Executive Secretary

